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Pt. 5



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# LABOR RELATIONS

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## HEARINGS

BEFORE THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

EIGHTY-FIRST CONGRESS

FIRST SESSION

ON

### S. 249

A BILL TO DIMINISH THE CAUSES OF LABOR DISPUTES  
BURDENING OR OBSTRUCTING INTERSTATE  
AND FOREIGN COMMERCE, AND  
FOR OTHER PURPOSES

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PART 5

FEBRUARY 18, 19, 21, AND 22, 1949

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JUN 8 1949

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## LABOR RELATIONS

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FRIDAY, FEBRUARY 18, 1949

UNITED STATES SENATE,  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D. C.*

The committee met, pursuant to adjournment, at 9:30 a. m., Senator Elbert D. Thomas (chairman) presiding.

Present: Senators Thomas (chairman), Murray, Pepper, Hill, Neely, Douglas, Humphrey, Withers, Taft, Aiken, Morse, and Donnell.

The CHAIRMAN. The committee will be in order. Mr. Fosdick.

Mr. Fosdick, will you give us your name and any information you wish to appear in the record.

### STATEMENT OF S. J. FOSDICK, ON BEHALF OF THE NATIONAL RETAIL DRY GOODS ASSOCIATION; ACCOMPANIED BY GEORGE L. PLANT AND LEONARD ROVIN

Mr. Fosdick. Mr. Chairman, my name is S. J. Fosdick, and I am vice president and general personnel manager of the Wieboldt Department Stores, Inc., Chicago. I am also chairman of the personnel group of the National Retail Dry Goods Association upon whose behalf I appear before you.

The National Retail Dry Goods Association is a voluntary trade organization whose members operate some 7,000 retail department and specialty stores located in every State in the Union. Its membership comprises small as well as large retail stores. Approximately 65 percent of its members do an annual volume of business of less than \$1,000,000.

Mr. Chairman, I have a statement prepared here, which I would like to submit for the record.

The CHAIRMAN. It will be included, for the record.

(The prepared statement submitted by Mr. Fosdick is as follows:)

#### STATEMENT IN BEHALF OF THE NATIONAL RETAIL DRY GOODS ASSOCIATION

My name is S. J. Fosdick and I am vice president and general personnel manager of the Wieboldt Department Stores, Inc., Chicago. I am also chairman of the personnel group of the National Retail Dry Goods Association upon whose behalf I appear before you. The National Retail Dry Goods Association is a voluntary trade organization whose members operate some 7,000 retail department and specialty stores located in every State in the Union. Its membership comprises small as well as large retail stores. Approximately 65 per cent of its members do an annual volume of business of less than \$1,000,000.

Many of its members now have one or more collective-bargaining agreements in force with labor unions. Our members are directly interested in and affected by legislation governing collective bargaining activities.

Retail management's stake in labor legislation is not in laws that tend to impair or limit the right of employees to join unions or the right of unions to represent them in free and honest collective-bargaining activities. Management's stake rather is in laws that do two things—first, prescribe rules of fair conduct in order that employees when asked to merge their individual interest with the interest of an entire group, may exercise their choice in an informed and intelligent manner free of coercion or fear of any kind from any source; and second, laws that protect management against the impairment of efficient and continuous business operation.

Retailing is currently confronted with a multiple-pronged drive by various labor unions to organize employees in stores throughout the country. This announced drive comes not only from the leading unions but from various subdivisions within both the CIO and the AFL. It is bound to be confusing to both management and employees—and particularly the employees when they may be solicited by several union organizations simultaneously to represent them with their managements. It resolves itself simply to a contest between management on one hand and the labor organization on the other for the loyalty of employees. If management is to have an equal opportunity in retaining the loyalty of their employees and if the employees are to exercise their free choice in an intelligent manner in the absence of coercion or fear, rules of fair conduct should be prescribed and specifically set forth by legislative enactment which will apply equally and fairly to management and to unions. We believe the establishment of these principles is necessary in the best interests of the public and of the employees and employers in the retail industry. We therefore strongly urge that any new labor legislation to be enacted or any amendment of existing labor legislation should establish the following principles by the direct incorporation in the law itself, of provisions to effectuate their purposes.

1. *Freedom of speech for both management and union in labor matters.*—New legislation should insure the right of employers as well as labor organizations to freely express their views on labor matters provided that such statements in themselves do not threaten economic reprisal or violence, give promise of benefits or make any other coercive inferences. Labor has long enjoyed complete freedom of speech. Employers were said to have had the right of free speech under the original National Labor Relations Act; but that right for management was so restricted and so qualified under the so-called "course of action doctrine" and "the captive audience theory" that it was only with the enactment of the Labor-Management Relations Act of 1947 that an employer was really free to express his views and opinions in a labor dispute. This right of management should be explicitly provided.

2. *Outlaw the "closed shop" but permit the "union shop."*—The present prohibition against the closed shop contained in the LMRA should be continued but the troublesome and costly procedure for union shop elections can certainly be discontinued, leaving that issue to collective bargaining. Retailing has always been a free field of employment and is not adapted to so-called "hiring halls." Because of the public contact nature of the retail business, high standards of appearance and other personality traits are basic employment requirements. The retailer should be free to select his employees from any available source, and at the same time opportunities for a career in retailing should be available to all. Union security in retailing can always be protected without infringement of either the individual's right to seek employment wheresoever he may choose or of management's right to select his own employees. There is no history of closed-shop arrangements in retailing which is characterized by continuity of employment throughout the year with additional employment opportunities at peak periods.

Related to the right of the employee to freely solicit employment is the principle that he should not be deprived of employment, once attained, merely because of expulsion from a union other than for the nonpayment of dues and initiation fees.

3. *Guaranteeing individuals the right to engage in or to refrain from engaging in concerted union activities.*—The overriding purpose of labor legislation has been the right of employees to determine for themselves whether they prefer to deal with management individually and directly on questions of wages, hours and conditions of employment—or whether they prefer to be represented by a union. All other provisions of labor law which establish rights or obligations for employees, labor organizations and employers flow from this fundamental right vested in employees. Section 7 of the NLRA (Wagner Act) announcing employees' right to engage in concerted activities established the foundation upon



which employer unfair labor practices were based. The LMRA paralleled the NLRA by adding a provision to section 7 recognizing the fundamental right of employees to refrain from such concerted activities. Thus was established the basis that union interference with this fundamental right by way of coercion or encouragement of certain strikes and boycotts for illegal purposes constituted union unfair labor practices. To safeguard this fundamental right of the individual to make up his own mind on the question of representation requires that any new labor legislation reiterate his right to engage in or refrain from engaging in concerted activities for the purposes of collective bargaining.

4. *Setting forth unfair labor practices by unions as well as by management, particularly with respect to strikes and boycotts for illegal purposes including provision for injunctive relief.*—The right of an employee to freely select his bargaining agent should be guaranteed against coercion not only by the employer but also against coercion by the union, instances of which have been many in the past.

Similarly it should be an unfair labor practice for one union to strike for bargaining rights where another union has been certified or has contractual relations with the employer. If an employer is legally obligated to deal with a particular union, surely the same law that imposes the duty should protect him against efforts to force him to deal with any other union. The present act prevents such a distortion by making these activities subject to injunction and it is difficult to find any justification for its repeal.

It should also be unlawful for any union to engage in picketing and boycotting of a secondary nature which involves "picketing of the premises of or refusal to work for, or refusal to handle merchandise for a person who is not a party of the labor dispute which such acts are intended to affect." Such boycotts invariably result in loss and inconvenience to innocent bystanders who have no connection with the particular labor dispute. Retailers are especially susceptible to secondary strikes and boycotts. They feel strongly that parties to a dispute should be required to settle their differences between themselves.

Similarly it should be an unfair labor practice for employees or a union to engage in a jurisdictional strike. Here, too, an employer is confronted with demands by opposing unions which he cannot resolve. It is an issue which he has not created and cannot settle. The law should continue to protect him against such senseless harm.

Legislation should also define other unfair labor practices by unions which experience has already established—such as refusal to bargain, and "featherbedding."

5. *Require NLRB to seek injunctive relief in instances of illegal strikes and boycotts.*—New labor legislation should continue to make it mandatory for the Board to seek injunctive relief where labor unions strike to force employers to capitulate to illegal demands and practices as outlined in the preceding principle. Whereas the present law leaves it to the discretion of the Board to act in cases involving jurisdictional disputes, we think here, too, injunctive relief should be made mandatory.

6. *In determining appropriate bargaining units the extent to which employees have been organized should not be controlling.*—Prior to the enactment of the LMRA, the Board permitted unions to carve units out of larger groups depending largely upon the extent to which the unions had succeeded in organizing among a given group of employees. This was true even though the employees so organized composed an integral part of a larger operating unit. The LMRA attempted to minimize such "accident of organization" by providing that the extent of organization should not be controlling in determining the appropriate unit. The implication being that greater consideration be given to the actual business operations and conditions of employment for all employees concerned in determining the appropriate unit. This principle is particularly pertinent to retailing and should be continued. In the past, unions have sought to establish units consisting of individual selling departments rather than the selling force as a whole and in other instances have concentrated upon certain nonselling groups rather than on all related nonselling activities. Such balkanization of employees into splinter groups disregards completely the close relationship among the many and varied operations characterizing retailing. And what is most important, it ignores the factors of uniformity of working conditions, personnel policies and practices, compensation methods, and supervision for all retail employees, thereby destroying the true operating unit and curtailing management's efficiency.

7. *Exclusion of supervisor from bargaining rights.*—Supervisors are part of management and represent the employer to rank-and-file employees. By the very

definition spelled out in the LMRA, true supervisors are vested with such genuine management prerogatives as the right to hire or fire, discipline, promote, grant rate increases or to make effective recommendations with respect to such action. Membership in a labor organization, whether a rank-and-file union or an organization of foremen would obviously create conflicts of interest incompatible with their obligations as management representatives. While it is unlikely that legislation can prevent supervisory membership in unions, the law ought not to encourage the unionization of supervisors, and employers should continue to be relieved of any compulsion to recognize and bargain with unions on behalf of supervisors.

8. *Permitting the employer or individual employees, as well as labor unions to petition for elections.*—The employer and the employee should have equal recourse to the NLRB in the matter of representation elections to preserve the peaceful method of settling disputes whether it be one union or several unions seeking representation rights. The argument advanced by unions that such a provision could serve to permit employers to effectively frustrate employee organization by petitioning for an election immediately upon the appearance of organizers must necessarily fail because the Board still retains the discretion to dismiss petitions whenever conditions make an election inappropriate. When only the union is given the right to petition for an election, management may be pressured by unions for recognition in instances where there is doubt that they truly represent the employees and where the union refuses to submit the claim to formal determination under the Board's facilities.

Similarly, the right of the employee to petition for decertification election should be preserved. Also, management should be protected from unnecessary harassment by some restriction on the frequency with which elections for representation purposes are held.

9. *Provide restrictions on union welfare funds to which management contributes.*—It seems essential that where employers contribute funds for the welfare of their employees based upon services rendered by such employees, that the use of these funds be strictly safeguarded and that the administration of the trust be held strictly accountable. Joint administration, periodic audits and reports to the membership are among the basic requirements for protecting the best interests of employees and their beneficiaries.

10. *Preserve administrative procedures for the investigation and prosecution of unfair labor practices charges separate and apart from the judicial function of the Board.*—This is fundamental to the whole democratic process and in prescribing rules for an orderly solution to labor disputes, this principle should be incorporated in the law.

11. *Unions should be responsible in damages for breach of contract and other unlawful acts.*—The importance of such responsibility needs little argument from an employer's point of view. However, even from the point of view of labor it is important that it should recognize that responsibilities go with privileges and that the day of irresponsible leadership is past.

12. *Adequate procedure for handling strikes affecting the health and safety of the Nation.*—While it is improbable that a labor dispute in any retail establishment would directly affect the national welfare, the retail trade feels strongly that no union should be in a position of paralyzing the economy or the safety of this Nation for the purposes of promoting its own interests. In the interest of the public effective and adequate procedures should be incorporated in any new legislation for dealing with national emergencies arising from labor disputes. We question if the provision for merely a "cooling off" period is sufficient.

13. *Preserve an independent Federal mediation and conciliation service.*—Experience has certainly demonstrated that the success of mediation in resolving labor disputes hinges entirely upon the objective and unbiased perspective of the mediator or conciliator. We believe it can function more effectively as a separate agency.

We believe that the above principles are essential to good labor relations and are in the interest of the public and of the parties directly affected. We urge that they be specifically provided for in new legislation to be enacted.

Mr. FOSDICK. On account of economy of time, I will not read my statement but, if I am permitted, I would like to make a few comments.

We are interested in our employees. The relationship between the store and the employees is peculiarly delicate and important. We

think in these matters of discussion of labor and management, there is not enough said on behalf of the employee.

We have another interest which is very broad. There perhaps is no more delicate barometer of the economic life of the community than the stores in that community. Whatever affects that economic life affects our business. If there is an epidemic, a strike, or any other situation in the community that affects it, it affects our business.

We are interested from that standpoint that labor relations be carried with the least possible trouble and work stoppages. Stores of the Nation feel that we are now approaching a very interesting period in our development, the industry is not organized, we have been presented with statements in the press and otherwise that the retail business is now ripe for the picking, and that also spurs our interest in good labor relations and an opportunity to be heard.

The CHAIRMAN. What do you mean by "retail stores are now ripe for picking"?

Mr. FOSDICK. That, I quote from various press comments. There are a large number of employees in the retail business; the organization is not very widespread except in the larger centers. However, a number of unions, in fact, four—CIO, AFL—have publicly said they are going to organize the retail business. They have also raised large sums of money. Three of them claim they have funds of a million dollars to do the job.

We think that should go forward in an orderly fashion and with the least interruption of trade because whenever there is an interruption of trade at the retail level, you find generally the distributing process comes to an end.

We think our customers, who are your wives and your families, for whom we are the purchasing agents, should be served.

The CHAIRMAN. You mean, if we do get a strike, our wives wouldn't buy for a while?

Mr. FOSDICK. I think some of us would think that was a good idea, but there are people who do have needs and wants that must be satisfied, and whenever we have our stores in labor difficulties, those needs and wants are not satisfied.

The CHAIRMAN. The organization of sales people is not anything new; is it?

Mr. FOSDICK. No; it is very old, as a matter of fact. I think some of the early unions go back to shortly after the Civil War. It is not a new situation at all.

But we are now going to experience a multiple-pronged drive, and you can imagine the confusion that is going to exist in the minds of many merchants as well as in the minds of many employees, because here are four unions who have said: "We are going to have those people."

That is why I would like to present to you very briefly these few points and principles that we think are essential in labor legislation.

The CHAIRMAN. You do have the advantage of some other business experience. You know that organizations come in, and you know how long it took to organize different industries. You know how long, you know the different steps, and you have a chance to study that; is that right?

Mr. FOSDICK. Very much so.



The CHAIRMAN. And you are on the alert.

Mr. FOSDICK. We believe that there should be in any labor legislation guaranteed freedom of speech for management as well as unions. Certainly that is a constitutional right, but under the Wagner Act management had little opportunity to speak because it was usually declared as an unfair labor practice.

We think we should have a right to talk to our employees about the matters so long as there is no statement of coercion, offer of benefits, for belonging or not belonging, but we do think that fundamental right of freedom of speech should be included in the law for management as well as for unions.

We think that the union shop should be permissive. We think the closed shop should be banned for retailing, because the closed shop is, in our opinion, impracticable, because in a store the salespeople are the people in the store who meet the public, and they are the store. As one store expresses it, it expresses the personality of the store to a large degree that way, and, therefore, we must have the right to make our basic selections of those people.

As far as the union shop is concerned, that to me is a matter that can well rest with negotiation. We think that the employee should be given the right either to engage in or refrain from union activities. We think that there should be set forth unfair labor practices by unions as well as by management, particularly with respect to strikes and boycotts for illegal purposes, including provisions for injunctive relief.

We think the employee should have the right to select his bargaining agent freely. We think it should be an unfair labor practice for one union to strike for bargaining rights when there is a bona fide contract in existence.

We think it should be unlawful for any union to engage in picketing and boycotting of a secondary nature which involves—

picketing of the premises of or refusal to work for, or refusal to handle merchandise for a person who is not a party to the labor dispute which such acts are intended to affect.

We have that case frequently coming up in stores where a merchant buys, in good faith, merchandise, and then suddenly he gets it in the store and a labor dispute develops in the factory where the merchandise is produced, and the merchant is told, "Take that off sale, or people don't work, and we will picket you."

We think we ought to have relief from such a situation.

We think that featherbedding should be abolished.

We think that it should be made mandatory on the National Labor Relations Board to seek injunctive relief in case of illegal strikes and boycotts.

In determining appropriate bargaining units the extent to which employees have been organized should not be controlling. During the early years of the department stores the unit was completely an accident of organization. In one store you would have A. F. of L. salespeople on one side of the aisle and on the other side of the aisle you would have CIO salespeople. Many stores have as many as 20 labor contracts which came about through this accident of development. You can imagine the difficulties of making your organization work smoothly.



We think supervisors should be excluded from bargaining rights. We know there is a twilight zone, but that zone should be narrowed and supervisors should be excluded from the bargaining unit.

We think that the employer, as well as individual employees, should be given the right of petitioning for election, as well as unions.

The CHAIRMAN. On this supervisor business, who in retail stores would be a foreman?

Mr. FOSDICK. We have a level of supervision called in some stores floor managers and in other stores section managers. That would be one level. That would perhaps be at a foremen's level, I would say.

Our buyers, who in most stores are department managers, of course, are above what I would think the foreman level would be.

But your floor manager has discretionary powers of recommendation for hiring and firing; he has scheduling, disciplinary activities, and so on.

Then there would be a man in the stockroom, for example, such as the head stockman who would operate a whole area or floor of stock-people, and he has very similar managerial responsibility.

We have section heads, and such people, but I am not thinking of them. I am thinking of the people who would run a whole floor of a stock warehouse.

Senator TAFT. Have you had occasion to have the definition applied, which is in the act?

Mr. FOSDICK. No; we haven't. We have tried very hard to sharpen those lines so there will be less of a twilight zone and the lines will be sharper.

We think, as I said, that the employer, as well as individual employees, should have the right with labor unions to petition for elections.

We think that where union welfare funds are provided by the contract there should be supervision and restrictions placed on those, and joint responsibility for those funds.

We think that the administrative procedures for the investigation and prosecution of unfair labor practice charges should be separate and apart from the judicial function of the Board.

We think that unions should be responsible in damages for breach of contract and other unlawful acts.

We think there should be adequate procedures for handling strikes affecting the health and safety of the Nation. We do not presume to say how this should be phrased, but if there is a right vested in anybody, that right should be specifically stated in the act so there will be no misunderstanding about it.

We believe that the Federal Mediation and Conciliation Service should be preserved as an independent agency.

Gentlemen, those are briefly our points, and I should be glad to answer any questions on them you care to ask me.

The CHAIRMAN. Senator Donnell.

Senator DONNELL. May I say to Mr. Fosdick that Senator Smith, under our division of duties on this side, was to have conducted the examination following your statement, but owing to the necessity of his attending another very important meeting, he is not able to be here; and, pursuant to his desire, I am to have the privilege of asking you a few questions.

Mr. Fosdick, you referred in your statement to the closed shop and I notice your mention on page 3 of this fact:

There is no history of closed shop arrangements in retailing, which is characterized by continuity of employment throughout the year with additional employment opportunities at peak periods.

There are two points to which I desire to address myself in my question to you at this moment.

In the first place, I take it from what you say here that there is quite a distinction in history between the retailing business and such an organization as the International Typographical Union, for instance; is that right?

Mr. FOSDICK. Yes, sir.

Senator DONNELL. In the latter case there is a history of long years of apprenticeship; whereas in the retail business that is not true. Am I correct?

Mr. FOSDICK. That is right.

Senator DONNELL. So is that substantially what you refer to when you say that there is no history of closed shop arrangements in retailing? Is that one point you have in mind in that reference, the distinction between the two types of industries?

Mr. FOSDICK. Beyond that, so far as we know, there has not been a closed shop situation in retail organizations. The general situation where it has gone to the greatest degree in evolution is that where people must join, but the merchant has had traditionally and still has the free choice of people initially.

Senator DONNELL. So there has been no history in the retail business, so far as you know, prior to the present time of a requirement that the retail storekeeper must have a closed shop; is that right?

Mr. FOSDICK. That is right.

Senator DONNELL. And you see no reason for permitting by law the making of such contracts, when there has been no necessity shown by historical development for it to exist; is that right?

Mr. FOSDICK. That is right.

Senator DONNELL. You also mention in that same sentence: "additional employment opportunities at peak periods."

Am I correct in visualizing this as one illustration in your opinion of, for instance, a large department store—for instance, in the city of St. Louis, the Famous-Barr Co. Are you familiar with that? It is run by the May Department Stores Co. There was a gentleman here the other day representing that organization.

At Christmastime they have to add a great number of employees in their stores; is that right?

Mr. FOSDICK. That is right.

Senator DONNELL. Am I correct in this understanding: That it would be impracticable to have a closed shop requirement by which they could not take on during those periods of stress and strain and necessity for large additions, they couldn't be confined by the requirement that they could not take anybody unless he was already a member of the union but, on the contrary, it would be perfectly practicable for them to take on only people who promised to join the union and do join the union within a reasonable time thereafter; is that right?

Mr. FOSDICK. That is right.

Senator DONNELL. So that the closed shop is not practicable from the standpoint of additional peak period employees; whereas the union shop is practicable; is that right?

Mr. FOSDICK. That is right. There is another point there that I would like to bring out in that connection, and that is this continuity of employment throughout the year. I believe in those areas where closed shops are used there are seasonal and peak employment periods with periods of being out of work.

In a department store, whether we have any business or not, there is a minimum basic staff we have to have there every day we open our doors. In fact, we call it a sentinel coverage; so the great bulk of people have no problem of 52-weeks' work. They have it.

On the other hand, there are people whom we use, as we say, part time over the holidays, those going into full time jobs, so there is a great continuity of employment, which is not typical of manufacturing industries.

Senator DONNELL. You say retailing is not adapted to so-called hiring halls. Is my understanding correct in this, that by "hiring hall" you are referring to an institution under which, if you wanted to get an employee, you would have to go down or phone down to the union hall and let the union pick out the person who is to come to you?

Mr. FOSDICK. That is right.

Senator DONNELL. You don't want to do that. You think the personal appearance, personality, characteristics, and so forth of the person who is to deal with the public for your store are vital to your business?

Mr. FOSDICK. That is right.

Senator DONNELL. And you don't want to leave it to someone in union headquarters to pick out the person who may be sent down to you to sell gloves, while that person may not be fitted by personality or aptitude to do that; is that your point?

Mr. FOSDICK. That is our point.

Senator DONNELL. Mr. Fosdick, I want to ask this question, too. The Taft-Hartley Act and the Wagner Act, too, for that matter, I take it, can only be valid insofar as they relate to matters which either constitute or affect interstate commerce. I think I am stating substantially what is correct, but perhaps roughly, as to the legal position.

What is the fact in regard to the great majority of sales in the usual retail business of members of your organization, as to whether it does constitute interstate commerce or does not, in your opinion?

Mr. FOSDICK. The retail industry as such has always taken the position that retailing was intrastate commerce.

Senator DONNELL. Rather than interstate commerce?

Mr. FOSDICK. Rather than interstate, but in those cases where the National Labor Relations Board has been asked to take jurisdiction by a union, they have invariably held that they are in interstate commerce because a strike or work stoppage in that store would block the flow of commerce interstate.

Senator DONNELL. Have the legal counsel of your association advised your association as to the correctness or incorrectness of that legal position?

Mr. FOSDICK. I would like to have Mr. Plant answer that question.

Mr. PLANT. I think it has been determined by the Supreme Court.

Senator DONNELL. What was it, sir?

Mr. PLANT. I think it has been determined by Supreme Court decision. One or two stores felt that the National Labor Relations Board did not have proper jurisdiction, but the courts have held that because they buy a certain amount of goods which comes across State lines and because a small amount of goods may be shipped out of the State to customers, they are in interstate commerce or their activities affect interstate commerce and, therefore, are subject to the act.

Senator DONNELL. As I understand it, under the Fair Labor Standards Act there has been set, by the Wage and Hour Administrator, some arbitrary figure as to a certain percentage of the volume being considered as determinative of whether or not the particular store is or is not under the Fair Labor Standards Act.

Mr. PLANT. Under the present act if a majority of the sales is within the State the store is considered intrastate.

Senator DONNELL. Your members operate some 7,000 retail department and specialty stores located in every State in the Union; is that right?

Mr. FOSDICK. Yes.

Senator DONNELL. I have used the Famous-Barr Co. in St. Louis for an illustration. Would you consider there should be any difference in the law as to the Famous-Barr Co. in St. Louis, which has transactions of many millions of dollars a year, doubtless, a considerable part of which is interstate, and a store in the city of Marshall, Mo., of five or six thousand population, where the great bulk, if not nearly all, of it is business which is confined to Saline County, Mo.—would you say there is any legal position there as to whether the one should be under such an act as the Labor Relations Act and the other should not?

Mr. FOSDICK. I think that for the purpose of fair labor procedures that the store in Marshall, Mo., might well be in the same category as the big store such as Famous-Barr.

Senator DONNELL. You would not attempt in your judgment to advocate that the small store, such as the one I mentioned in Marshall, Mo., should not be under the act, whereas, the large one in St. Louis should be?

Mr. FOSDICK. I would not.

Senator DONNELL. Is your counsel prepared to say whether or not if the fact were shown that in Marshall, Mo., the Aldermans Dry-goods Co. there sells 99½ percent of its merchandise solely in Saline County would differentiate it in any way from the Famous-Barr Co. in St. Louis where, because of East St. Louis being so close, there might be a larger percentage of interstate transactions?

Mr. PLANT. It is my understanding that the attitude of the National Labor Relations Board does not make any distinction.

Senator DONNELL. Do you think there should be any distinction as a matter of law?

Mr. PLANT. No; I think retailing is local in character and serving the local community needs. It is true that partially all stores do buy merchandise shipped in across State lines. They sell generally very little merchandise outside of the State.

Senator DONNELL. Do you think either of those stores mentioned, the one in St. Louis or the one in Marshall, should be subject to the operation of a law such as either the Taft-Hartley law or the Wagner Act?



I mean from a legal standpoint, do you think it should or should not?

Mr. PLANT. We didn't believe when the Wagner Act was passed that it applied to retailing.

Senator DONNELL. Do you still adhere to that opinion?

Mr. PLANT. I think the decisions of the courts have indicated that the law was so worded as to apply to retailing because they bring merchandise into their stores, stock it and sell it to the people.

Senator DONNELL. Under the court decisions, you now think it is clearly true that such establishments are subject to the act?

Mr. PLANT. Yes.

Senator DONNELL. May I ask whether or not, as a matter of principle, if it hadn't been decided by the courts, would you advocate that the act be so drawn as to make these retail stores subject to it, or would you draw it so as to make the retail stores not subject to it?

Mr. FOSDICK. I think the act should be so drawn as to cover it.

Senator DONNELL. You think all stores, both small and large, should be under the act?

Mr. FOSDICK. Yes; an act that provides fair practices and fair rules that any reasonable man would subscribe to for both union and management should apply.

Senator TAFT. Is the same thing true for the Wages and Hours Act?

Mr. FOSDICK. I think you have a different situation there.

Senator TAFT. I think the definition should be the same. I think it ought to be the same in both, although it is open to question. Either it is a proper subject for Federal legislation or it is not.

Senator DONNELL. What was the Senator's observation?

Senator TAFT. It seems to me the definition should be the same in the Wages and Hours Act as in this act, whichever way it goes. It seems to me it should be governed by the same rules.

Senator DONNELL. What do you have to say to that observation?

Mr. FOSDICK. It looks like we are both talking out of both sides of our mouths at once, but the fact is that again because of the peculiarity of the industry and the type of people that are drawn into it, I think that the local situation, the local cost of living, the local practice and tradition of wage payment should prevail and should be primarily a matter of State regulation and State right because of the widespread difference in the country and the different situations in each State.

Senator DONNELL. You do not think the retail establishments such as you referred to should be under the Fair Labor Standards Act?

Mr. FOSDICK. They should not be.

Senator DONNELL. Should it or should it not be under the Labor Relations Act?

Mr. FOSDICK. We believe it should be under the Labor Relations Act because there again you have got completely—I don't see that the situation is analagous. You have a completely different kind of thing happening under labor organization and labor law than you have under just simply the setting of a wage.

Senator DONNELL. Mr. Plant, as counsel—

Mr. PLANT. Senator, I am manager of the personnel group; I am not counsel.

Senator DONNELL. Is this gentleman counsel?

Mr. PLANT. He is my associate.



Senator DONNELL. You do not have a lawyer here?

Mr. PLANT. No.

Senator DONNELL. Are any of you familiar with the Oppenheim-Collins case in New York last fall?

Mr. PLANT. Generally. Mr. Rovin is more familiar than I.

Senator DONNELL. Is that one of the cases to which you referred as indicating the rulings of the Board on this matter of applicability to the Labor Relations Act of retail establishments?

Mr. PLANT. I was referring to cases before the Taft-Hartley law was enacted.

Senator DONNELL. Very well. Now, Mr. Fosdick, on page 4 of your statement, in the second from the last full paragraph you say:

The right of an employee to freely select his bargaining agent should be guaranteed against coercion not only by the employer but also against coercion by the union, instances of which have been many in the past.

Does some illustrative instance occur to you at the moment, that you could tell us about, so that we may see the practical application of the point to which you refer?

Mr. FOSDICK. This is the sort of thing that happened in the past in stores. A small number of people will join a union. The union will come in and demand a contract. We may say, "We don't know how many people you have." The answer is, "You don't need to know that. We have got your people. So, if you want to count them, we will put them on a picket line, and you can count them on a picket line."

In that process people are told they better join up, and, depending upon the group that is doing the organizing, you get all sorts of threats of coercion, they go to their homes, and so on. I can't name them, but I can certainly supply the committee with specific cases covering those points.

Senator DONNELL. Would you be kind enough within the next few days to send over your signature a number of those illustrative cases, making them sufficiently in detail so that we may understand specifically the points?

Mr. FOSDICK. Yes.

Mr. FOSDICK. You get this sort of situation, too, which is now going on. Union organizers go into a community, call a meeting of all merchants, and say, "Now, look, you are going to have a union here. You can do it nice, or you can do it hard."

So, they make a deal, and the employers sign a contract, and the employees are told to join the union.

Senator DONNELL. Told by whom?

Mr. FOSDICK. Told by the management, then. You have wiped out the right of the employee to decide, because, literally, he at that time is coerced by management. In either situation you have the employee being coerced. In the other situation you have the union organizers themselves doing the coercing.

Senator DONNELL. In other words, you favor, as I understand it, a rule which applies on both sides; that says neither management shall tell the employees to join the union nor shall labor interpose coercion or intimidation to bring about the joining of a union by employees.

Mr. FOSDICK. That is right.

Senator DONNELL. And I take it that is quite consonant and in line with your general view that there should be the doctrine of what is sauce for the goose being sauce for the gander; is that right?

Mr. FOSDICK. That is right.

Senator DONNELL. If there is freedom of speech for the union, there should be freedom of speech for management, and if there is not to be coercion by management, there should not be coercion by unions; that if there are certain practices that are deemed unfair by management that likewise is true that the statute should prohibit any acts by labor which are unfair—in other words, you believe that a balanced law is proper rather than a one-sided one?

Mr. FOSDICK. Yes, sir.

Senator DONNELL. Do you regard the Taft-Hartley Act, generally speaking, as providing a practical balance between labor and management?

Mr. FOSDICK. We have felt so.

Senator DONNELL. How long an experience have you had in the retail business, Mr. Fosdick?

Mr. FOSDICK. Thirty-seven years.

Senator DONNELL. Thirty-seven years?

Mr. FOSDICK. Yes, sir.

Senator DONNELL. In Chicago, nearly all the time?

Mr. FOSDICK. No; I started out in the State of Washington.

Senator DONNELL. The State of Washington?

Mr. FOSDICK. Yes, sir.

Senator DONNELL. In a large or a small town?

Mr. FOSDICK. A town of 1,208 people after we moved there.

Senator DONNELL. Has it maintained its population since you left?

Mr. FOSDICK. They have lost five people since our family moved.

Senator DONNELL. Where did you go from the State of Washington?

Mr. FOSDICK. I went to Seattle. I went to Painesville, Ohio.

Senator DONNELL. Senator Taft would be interested in that. Is that quite a large town, or not?

Mr. FOSDICK. I suppose Painesville, when I was there, had 10,000 or 15,000.

Senator DONNELL. From there, where did you go?

Mr. FOSDICK. From there I went to New York and worked in a number of large New York stores.

Senator DONNELL. Were you in Gimbel's stores there?

Mr. FOSDICK. I never worked there.

Senator DONNELL. Did you work in Macy's?

Mr. FOSDICK. I didn't work in Macy's. I worked with Abraham Straus, Bloomingdale, and Bamberger in Newark, and from there I went to the west coast—Spokane, Seattle. I was there 12 years, and then went to Pittsburgh for 5 years and Chicago for the last 7.

Senator DONNELL. When you lived out in the town of 1,208 population—what was the name of that town?

Mr. FOSDICK. Goldendale.

Senator DONNELL. Were you in the retail business there?

Mr. FOSDICK. Yes, sir.

Senator DONNELL. What line of business?

Mr. FOSDICK. My father had a small dry goods store employing three people.

Senator DONNELL. You worked there for your father?

Mr. FOSDICK. Yes.

Senator DONNELL. How old were you?

Mr. FOSDICK. Fifteen.

Senator DONNELL. How long did you work for him?

Mr. FOSDICK. While I was in high school, 4 years.

Senator DONNELL. You have had quite a comprehensive experience, I take it, in the retail business, both in the small and large places?

Mr. FOSDICK. Yes, sir.

Senator DONNELL. Your organization, as you have indicated, has stores located in every State in the Union; is that right?

Mr. FOSDICK. Yes, sir.

Senator DONNELL. One final question, and that relates to the matter of the preservation of an independent Federal mediation and conciliation service.

I want to ask you this question: What do you think would be the usual attitude of a department store—taking, for instance, your own store in Chicago or any other store you may think of in Chicago, or in the smaller places for that matter, too—and suppose they were having trouble between themselves and their employees; the employees, the union, on the one hand, and the management conducting its own negotiations on the other; suppose that it were suggested that mediation was proper; suppose that the store was a corporation having a large number of stockholders scattered around various places; suppose you were the president of that corporation and it was suggested to you that you should go down to the mediation service in the Department of Labor, formed for the purpose of promoting the interests of the wage earners, et cetera, in which its Assistant Secretary, one of them, is a CIO member and the other is a member of the A. F. of L.; suppose it were suggested to you that you go down there to get your conciliator; would you feel it would be as just to your stockholders and those whom you represent, to place the settlement of the dispute that might involve many thousands of dollars in the hands of a conciliator coming out of the Department of Labor as it would to submit that same dispute to a conciliator coming out of an independent agency?

Mr. FOSDICK. We have resisted conciliation when the conciliation was under the Department of Labor for that very reason, that we never felt we got an impartial mediation.

Senator DONNELL. Now, you say, "we never felt"; whom do you mean by "we"?

Mr. FOSDICK. The companies I have been connected with when the situations came up. We had the feeling we might as well make some sort of settlement because if you get a conciliator in here we will probably do worse than we would have by a straight negotiation.

Senator DONNELL. If you get a conciliator from the Department of Labor, would you feel that you are likely to get as impartial a deal as if you have a conciliator from an independent impartial agency?

Mr. FOSDICK. We would get a more fair deal from an independent conciliator.

Senator DONNELL. You would feel more satisfied with that than with the conciliator coming out of the Department of Labor.

Mr. FOSDICK. That is right.

Senator DONNELL. Do you believe that the feeling you have expressed as to the advisability of having the conciliation and media-

tion service in an independent agency is shared generally by the 7,000 stores in your organization?

Mr. FOSDICK. I do, sir.

Senator DONNELL. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Are there any questions?

If there are no further questions, thank you, Mr. Fosdick.

Mr. FOSDICK. I thank you for the opportunity you have given us to put our position before you.

The CHAIRMAN. Mr. Idol. For the record, Mr. Idol, will you state your name and whom you represent and anything else you want to appear in the record.

#### STATEMENT OF EDGAR S. IDOL, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. IDOL. Mr. Chairman and members of the committee, my name is Edgar S. Idol. I am general counsel of American Trucking Associations, the national trade association of the trucking industry, with affiliated organizations including both for-hire and private carriers in each of the 48 States and the District of Columbia. Our offices are at 1424 Sixteenth Street NW., Washington, D. C.

No industry in the country, gentlemen, is more vitally affected by the national labor policy and national labor legislation than the trucking industry. Our labor is organized to a point where the teamsters union can, by a strike, close down motor transportation in any metropolitan area and shut off for-hire service in almost any section of the country.

Our board of directors is made up largely of men who own and operate their own companies, and who personally handle their own labor problems. At their last meeting, a resolution was adopted which is reproduced as an appendix to my statement. It expresses approval of the entire Labor-Management Relations Act, but my presentation will be confined to six material changes proposed by S. 249 which our board feels are of the greatest importance:

1. S. 249 contains no provision compelling unions to bargain in good faith: The success of collective bargaining depends upon requiring both parties to bargain in good faith.

Under both the Wagner Act and the LMRA it has been common practice in the trucking industry to carry on collective bargaining through employer associations. Under the Wagner Act, it was also common practice for the teamster unions, at the first sign of resistance, to abandon negotiations and break up the employer group by forcing individual settlements on weak employers. To illustrate: In New York City, local 807 has consistently sidetracked the employer bargaining group and ordered a city-wide strike, simultaneously making favorable agreements with individual employers who were willing to sacrifice their long-term interests to gain a short-term advantage in the transportation market.

Prior to 1947, employers caught in this position had no means of requiring the union to bargain with their representative and were usually forced to sign a labor contract which they did not have a chance to negotiate. Compare the situation under LMRA: Last year, the usual union strategy was followed in New York, but when local 807 bypassed the employer group, an unfair labor practice charge al-



leging refusal to bargain was filed, and local 807 promptly returned to the conference table.

Senator TAFT. When you speak of the employer group, you mean all the employers in the New York City area? Is that the group?

Mr. IDOL. That is right.

Senator TAFT. It is not a national group you are talking about?

Mr. IDOL. Merely confined to the local area in New York.

Senator TAFT. That is just the custom of the business?

Mr. IDOL. It has been the custom in the industry.

Senator TAFT. The board has taken the position that that is the proper bargaining unit, has it?

Mr. IDOL. Yes, sir; we think it is.

2. S. 249 will not adequately restrain secondary boycotts and jurisdictional strikes: Although the substitute proposed for S. 249 recognizes that jurisdictional disputes and some types of secondary boycott unjustifiably obstruct the flow of commerce, it overlooks most types of secondary boycotts, and does not establish an effective means of preventing those it proposes to curtail.

The trucking industry has long been used as a most effective organizing weapon by unions affiliated with the A. F. of L. Employees of producers and processors have been organized by the simple expedient of having teamster union members refuse to serve the enterprise. In such cases the employer is forced to recognize the organizing union regardless of whether it represents a majority of his employees. The Labor-Management Relations Act has curbed unwarranted cases of this type.

On October 15, 1947, a business representative of Teamster Union Local 294 was refused permission to enter the premises of Montgomery Ward at Menands, N. Y., without a pass. He immediately called upon all union drivers who were transporting merchandise in or out of the plant to cease working, regardless of the fact that none of them were employed by Montgomery Ward and that there was no strike or dispute between them and their employers. A charge was filed with the NLRB under the provisions of section 8 (b) (4) (A) of the LMRA and the boycott was called off within 48 hours.

Prior to enactment of the present law, there were many cases in which similar secondary boycotts were continued in force until the union had achieved its objective, while the helplessly involved trucking companies suffered severe losses.

3. S. 249 legalizes the closed shop: Without union security in any form, the teamsters union monopolized its field even prior to the Wagner Act. Other unions have grown to equal or greater power. If it is the studied opinion of this Congress that labor-management relations have not sufficiently matured to remove the prop of union security, the least that should be done is to continue the ban on closed-shop agreements.

Under the closed union an employer is powerless to hire or retain an employee who has been denied or deprived of union membership. This type of union security virtually allows a labor organization to control the size of an industry as well as the selection of its personnel.

The present law works. A tank-truck driver in New York was slightly behind in his dues to teamster local 445. On reporting for work he was met by the local's business agent who reminded him that

his dues were in arrears. The driver thereupon offered to pay on the spot by check. The business agent, however, ordered the man to drive 20 miles to Yonkers, N. Y., and pay in person at the teamster office. When the driver refused, the business agent ordered all drivers off the job, closed the business down for 2 or 3 days, and forced the employer to discharge the driver for not being in good standing. The NLRB found that the discharge was unlawful and ordered the driver reinstated, with back pay assessed equally against the employer and the union.

Senator TAFT. Is there a citation of that case?

Mr. IDOL. I do not have it at hand.

Senator TAFT. Can you supply the name?

Mr. IDOL. I will be glad to get it for you; yes, sir.

Senator DONNELL. There is one sentence you did not read. I assume you mean to, however. Would you read the last sentence in point 3 there?

Mr. IDOL. We do.

Senator DONNELL. The one reading—

We urge an amendment to S. 249 banning the closed shop and reenacting sections 8 (a) (3) and 8 (b) (2) of the LMRA.

Is that correct?

Mr. IDOL. That is correct.

4. S. 249 fails to make unions liable for breach of contract. The philosophy of the proposed national policy favoring the inclusion in labor contracts of procedure for settling disputes is fine, but business agents seldom approach a problem in a philosophical frame of mind, agreement or no agreement.

Parties to a contract should be able to settle any dispute arising over its application or interpretation, without the use of economic force by either side. Both should be able to resort to court action if necessary.

There is ample evidence in our industry that the existence of a right in the employer to enforce labor agreements brought us a large measure of labor peace during the past 19 months.

We think that was brought about because of the existence rather than the actual use of the act.

The fact that there have been but few damage suits brought by all of industry proves that the right has not been abused.

There have been only 37 suits brought by the employer and 19 by the union for the entire country.

We urge an amendment to S. 249 continuing in effect the pertinent sections of the LMRA.

5. S. 249 fails to give employees the right to select their bargaining agents.

It is patent to the most casual observer that the ultimate goal of most labor organizations is to extend the bargaining unit to include all companies in a given industry. Just last month, I believe it was in December, the International Brotherhood of Teamsters, AFL, began the formation of what they term national organizing conferences by which locals and joint councils of teamsters may exchange ideas and lay plans for assisting each other collectively. Their public pronouncements indicate each national conference will cover a single industry or a specialized section of one, such as dairies, warehouse workers, automobile transporters, and so forth.



I would like to read one further quotation from a talk by Mr. Dave Beck on that point.

Senator DONNELL. Would you identify him for the record, please. That is Mr. Beck of the teamsters union?

Mr. IDOL. Yes, sir, and this is a quotation from the Indiana Teamster, January issue, 1949.

Senator DONNELL. What is Mr. Dave Beck's official position with the teamsters' organization?

Mr. IDOL. He is, I believe, executive vice president. Yes; that is correct. Teamsters international union.

Senator DONNELL. Thank you.

Mr. IDOL. The particular quotation is from a long speech and reads:

All over-the-road general trucks and drivers are the key to the organizing of the tens of thousands of warehousemen. It is our purpose to set up the organizing machinery to do this job. When we organize warehousemen, we tremendously strengthen our economic position. When the job is done, the warehousemen will insist on all delivery and pick-up work being done by union drivers, and the drivers will insist that all warehousing be done by union warehousemen. In time of need, each will be invaluable to the other.

Senator DONNELL. Do you mind putting in the date and where it was delivered?

Mr. IDOL. According to the Indiana Teamster—

this message transcribed on records and wire recordings was read off a recording machine at the December 17 meeting of Joint Council 69 at 28 West North Street.

Senator DONNELL. December 17, 1948?

Mr. IDOL. Yes, sir.

Senator DONNELL. At Indianapolis?

Mr. IDOL. This is the home of this paper; yes, sir.

The LMRA has successfully arrested the unilateral extension of bargaining areas by force through the simple process of giving an employer the same right to select his bargaining agent which labor has enjoyed since the inception of the Wagner Act.

The law has worked. For example, all for-hire trucking companies in the State of New Hampshire have for some years voluntarily bargained a single labor contract with Teamster Local 633 for all employees in certain classifications. Significantly, labor and management have been able to consummate their collective-bargaining agreements without work stoppages. In the latter part of November 1948, the employers were told by union officials that the bargaining unit was to be enlarged to include all of New England and that there would be one agreement for 1949 covering the entire region. Had there been no LMRA provision giving the employers the right to choose their bargaining agent, we would have seen the area of bargaining extended by force.

Results of forced extension are too well illustrated by the strife which arose under the Wagner Act in 11 Midwest and Central States. The local unions of the teamsters turned over their bargaining authority to the Central States Drivers Council, an organization independent of the international union. With the aid of the War Labor Board and the Government's taking over 103 recalcitrant companies, that council forced a single agreement upon all affected employers. Following the demise of the War Labor Board, the Midwest Operators Association, representing all over-the-road employers in seven States west of the Mississippi, renewed their opposition and refused to con-

tinue as parties to the 11 Central States agreement. Their position was that conditions in States west of the Mississippi were so different, population so much less concentrated, traffic and transportation needs and conditions so different, that the same contract could not fairly cover the entire area. A 71-day strike tied up all truck lines in the seven States.

Unrest still continues. Employers and unions in the State of Ohio never did adopt the Central States agreement in full. All employers in Missouri and Kansas are seeking to leave the large group and bargain separately for those two States.

Employee representatives in Minnesota have vacillated between obtaining a rider to the area agreement and its complete acceptance.

The Detroit, Louisville, and Tulsa union locals have obtained riders to the area agreement.

We submit that the public interest, as well as that of management and labor, requires that industry-wide bargaining continue to be limited to instances where labor and management voluntarily agree.

I would like to add that, where we have as many employers as we have in the trucking industry, where there are not large employers, it seems to us there is no particular public interest served—in fact, that the public interest is disserved—by widening the scope of a single agreement to the point where a strike under that agreement creates a national problem, and it does create a national problem when the area gets large enough.

S. 249 provides no independent mediation service. The independent Federal Mediation and Conciliation Service has been much more effective in the trucking industry than its predecessor under the Department of Labor.

Employers in the trucking industry have freely used the independent Federal Mediation Service. They were extremely hesitant to invite its Labor Department predecessors to mediate disputes. Their reasoning may not have been correct, but it was certainly logical. Mr. Ching explained the situation to this committee so clearly that there is nothing for me to add.

We urge the continuation of the independent service.

The CHAIRMAN. Senator Aiken.

Senator AIKEN. Mr. Idol, you have given the example of local 807, which apparently undertook to refuse to bargain in good faith with the representatives of the employers. Is that the outstanding example, or have there been many cases of refusal to bargain in good faith on the part of the teamsters' union?

Mr. IDOL. I think that is possibly an outstanding example, although we ran into much the same type of thing in this Eleven-State area agreement, which I discussed under another heading.

There the situation worked out the same way. Labor decides on what it wants and presents the contract to an ineffective employer, and in that case a group of employers.

Senator AIKEN. You do not claim the practice has been general?

Mr. IDOL. No; I do not.

Senator AIKEN. Do you know any cases where the employers have refused to bargain in good faith?

Mr. IDOL. I don't know of a single case.

Senator AIKEN. Now, you mentioned that some types of secondary boycotts unjustifiably obstruct the flow of commerce.

Am I to infer from that, that you believe that some secondary boycotts are justified and others are not?

Mr. IDOL. No, sir. What I intended to convey there was that the substitute has recognized that some types of secondary boycotts are unjustifiable. We believe there are many other types of secondary boycotts which are also unjustifiable, but which would not be prohibited.

Senator AIKEN. Do you believe any secondary boycotts are justifiable?

Mr. IDOL. No, sir; we don't. We are particularly vulnerable to secondary boycotts.

Senator AIKEN. You probably would have some disagreement in some quarters on that statement.

Now I want to ask a question which is important to the people that I come in contact with a great deal. In your opinion, what protection is given to the producers of a perishable commodity against having the product lost, consequently in some cases an entire year's work, through sending that crop into market and running into a jurisdictional strike or secondary boycott? What protection is given in S. 249 against such loss?

Mr. IDOL. I know of no protection given in S. 249 against such loss.

Senator AIKEN. Do you know what protection is given anywhere against such loss? Is there such protection in the Taft-Hartley Act against such loss?

Mr. IDOL. There is the right under the Taft-Hartley law to attack secondary boycotts through an appeal to the Labor Relations Board, the consequent issuance of an injunction which prevents the maintenance of that secondary boycott for any specified period of time.

Senator AIKEN. But in the case of a perishable commodity, would you consider that effective, considering that it takes some time to obtain an injunction?

Mr. IDOL. It would not be effective in many cases.

Senator TAFT. There could be a suit for damage under the act.

Mr. IDOL. There would be that avenue also.

Senator AIKEN. In contracting to take this production to market, do the trucking companies assume any responsibility for its safe delivery to market?

Mr. IDOL. Certain companies, of course, have different types of responsibility. The common carriers among the industry have the usual common carrier's liability for damage, which extends to that of an insurer. A public riot or a strike, I am not certain, Senator, as to whether the carrier would be liable for damage resulting from a strike or secondary boycott.

Senator AIKEN. Assuming that a farmer's crop was sent into market, maybe it is a crop of peaches, all marketed within a few days. Suppose it is sent into market and because of running into a strike the crop is lost and it later develops that the strike was justified, that the unions were on the right side. Do you think that the producer should then have the same right of action against the employer whose action may have precipitated the strike as he would have against the union?

Mr. IDOL. I don't think he should have. I am sorry, I can't give you a direct answer on it. I don't believe he would have the same right of action against the carrier, even a common carrier.

Senator AIKEN. If he had the right of action against the union and it developed, if the National Labor Relations Board found that the unions were in the right, do you think he should have the right of action against the employer that precipitated the strike which resulted in loss of the crop?

Mr. IDOL. Against the employer who precipitated the strike?

Senator AIKEN. Shouldn't he have the equal right of action against both unions and employers, whichever one was the cause of the loss of the crop?

Mr. IDOL. It is a situation I have never given any consideration to, and I don't believe my answer would be of any particular value.

Senator AIKEN. It seems reasonable to me that whoever was responsible for the loss of the crop should be the one to be held responsible.

Do you think the Hobbs Act has been effective in checking the abuses or the racketeering against farmers driving their trucks into market with their own products?

Mr. IDOL. I think it has been highly ineffective so far.

Senator AIKEN. Did you say ineffective?

Mr. IDOL. Highly ineffective; yes, sir.

Senator AIKEN. Now, is that, as I have heard, because of the virtual inability to get witnesses to testify against the person who undertook to conduct such a racket?

Mr. IDOL. I have no personal knowledge of why the act has not been enforced. There is, I understand, and I saw in the newspapers just the other day an indictment being filed in New York under the Hobbs Act for racketeering.

Senator AIKEN. Well, as I understand it, it has been impossible to get convictions because most of the extortion has been brought about without the use of violence, and furthermore that where violence has been used it has been impossible to get witnesses to prove the case, and so far there have been only two convictions under the act, one in New Orleans, I think, and one in Philadelphia.

So, you consider the Hobbs Act has been very ineffective up to date in protecting farmers who desire to deliver their own produce to markets.

Mr. IDOL. Yes; I do.

Senator AIKEN. Do you think there has been any protection by reason of the Taft-Hartley Act? Has that assisted in that——

Mr. IDOL. It is not my understanding that the Taft-Hartley Act is designed to cover cases of that type, Senator.

Senator AIKEN. Well, not of extortion, but is there any protection at all in the Taft-Hartley Act against producers losing their crops through acts for which they were not responsible themselves?

Mr. IDOL. Secondary-boycott provisions might be effective, I think, to some extent.

Senator AIKEN. You do not know of cases of where they have been, or not?

Mr. IDOL. No, sir; I do not.

Senator TAFT. What about the relative desirability of an appeal to the Board as against an appeal to some district attorney? Have you any views on that?

Mr. IDOL. I think the appeal to the Board is more likely to be successful because the action does not carry with it the same implication.

Senator TAFT. Criminal——



Mr. IDOL. Criminal liability that the other does.

Senator AIKEN. Do you believe that in whatever law there is enacted there should be some protection to the producers of perishable commodities who lose their crops—through no fault of their own, of course?

Mr. IDOL. It certainly seems very unjust for a producer of perishable commodities not to be able to ship them to market with the assurance that they would get there and be delivered.

Senator AIKEN. And especially if they deliver them in their own trucks.

Mr. IDOL. Yes, sir.

Senator AIKEN. I have no more questions. I have asked what I have to ask. I would prefer to ask some of these questions of representatives of the teamsters union, but apparently there is not going to be an opportunity to do that, so I have asked you your opinion.

As I say, I would prefer to ask a representative of the union, but we are evidently not going to have a chance.

Senator TAFT. I have two questions.

The CHAIRMAN. Senator Taft.

Senator TAFT. Mr. Idol, in the case of destruction of perishable goods which might be due to a strike in which the employer and employees had simply failed to agree on a new contract, under those circumstances I do not suppose either could be held responsible for damages to those goods, could they?

Mr. IDOL. I do not believe they could, Senator; no, sir.

Senator AIKEN. You mean a strike between the trucking company and the employees.

Senator TAFT. And the employees. I mean in the case of an ordinary economic strike, I do not suppose there would be any recourse against anybody.

Mr. IDOL. No.

Senator AIKEN. Well, the contracts usually contain clauses, escape clauses, which relieve the company in the event of strike.

Mr. IDOL. Well, the common carriers' liability, Senator, is usually fixed by statute under the Interstate Commerce Act, and he cannot change that liability by contract.

Senator TAFT. Where this thing is interfered with by secondary boycott, I would suppose—

Mr. IDOL. Then you would have a question.

Senator TAFT. Then I suppose there would be a liability against the union. The Senator has supposed a third case where there might be a secondary boycott that was justifiable in which the employer—I do not quite envision the facts of such a case, but if certain employers conspired to prevent the activity of another one they would be liable in damages. I should think, to the owner of the perishable goods.

I cannot quite envision the case in which an employer would be liable for a secondary boycott, can you?

Mr. IDOL. I do not.

Senator TAFT. Can you imagine the circumstances to bring that about?

Mr. IDOL. I cannot imagine where an employer would be responsible for a secondary boycott.

Senator AIKEN. Senator Taft, that would all depend on whether there were justifiable secondary boycotts or not.

Senator TAFT. Yes; I suppose so.

Senator AIKEN. If the person should, or the one responsible for precipitating them, should be responsible.

Senator TAFT. Of course, I rather agree with Mr. Idol that in the trucking industry set-up, as I see it, I cannot think of the kind of justifiable secondary boycott. I can think of some in a manufacturing industry where you are required to work on goods that are being diverted because of a justifiable economic strike, but I do not quite know what kind of secondary boycott in the trucking industry could be justifiable.

Could you justify something?

Mr. IDOL. Almost all that we run into are of the type that are promised to us by Mr. Beck in the near future. He will organize the warehouse trade, and require all trucking companies who are using his members, and that is substantially all of the for-hire companies, at least, and most of the private, he will refuse permission to those companies to either deliver or pick up goods from warehouses which are not using members of his union.

That will be a secondary boycott, and that is the type that you run into practically all of the time.

Senator TAFT. There is one other question that I have.

You say:

There is ample evidence in our industry that the existence of a right in the employer to enforce labor agreements brought us a large measure of labor peace during the past 19 months.

Has there been a record of fewer strikes in the last 19 months than before? Have you got the figures?

Mr. IDOL. I have not the figures on it, Senator. What I refer to particularly there is in cases of the type that I quoted with reference to the business agent's forcing a man out—coercing a company out of operation because one of its employees had not paid up his union dues, and would not drive away unless they paid them up that morning. That company was tied up for only 3 or 4 days. The employer gave in, as it turned out, and discharged the man, but I think the employer there would have had the option, at least, of bringing a complaint of unfair labor practice before the Board and getting an injunction against the business agent's continuing the tie-up.

Senator TAFT. All I want to know is, have there been fewer strikes, fewer secondary boycotts, since the act went into effect?

Mr. IDOL. Oh yes; secondary boycotts have been almost out of the window.

Senator TAFT. It has been very effective in preventing secondary boycotts.

Mr. IDOL. Very effective.

Senator TAFT. That is all.

Senator AIKEN. Is not one of the best instances of the teamsters' union being used to organize other groups to be found in the case of the Walker-Gordon Dairies of about 3 years ago, wherein the teamsters union refused to deliver any of the projects from the Walker-Gordon Dairies until management assisted in or agreed to the organization of all the employees on the place, even through a majority of them did not desire a union? Wasn't that a straight—

Mr. IDOL. I am not familiar with that particular case.

Senator AIKEN. Secondary boycott?



Mr. IDOL. But it is typical of hundreds of cases over the country, as you describe it.

Senator DONNELL. Mr. Chairman, may I ask Mr. Idol a question?

Mr. Idol, there is one part of your testimony that I do not understand. I understand the facts that you may recite, but I just do not get the point that you make.

It is the fifth point, where you say:

S. 249 fails to give the employers the right to select their bargaining agents.

Then you say:

The Labor-Management Relations Act has successfully arrested the unilateral extension of bargaining areas by force through the simple process of giving an employer the same right to select his bargaining agent which labor has enjoyed since the inception of the Wagner Act.

A little farther down you refer to the results of—

forced extension being too well illustrated—

as you say—

by the strife which arose under the Wagner Act in 11 midwest and central states.

You say that a 71-day strike tied up all truck lines in seven States.

Now, I am somewhat familiar with that situation because it is out in my territory of the country. The point that I do not understand, and I want you to explain it, if you will, please, is just how it is that you think that the Labor-Management Relations Act, by giving the power or rather by making it an unfair labor practice for a labor organization to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances, just how that applies in the case of this forced extension.

Now, perhaps, you do not see just the difficulty that I am having, but here it is: I can see how it is very unfair and certainly productive of grave problems that instead of having a dispute localized, we will say, in the 10 western counties of Missouri, that all of a sudden the trucking operators—I do not mean the operators, the union which operates the trucks—say, “Well, we are going to make you bargain on an 11-State basis,” where there are differences in conditions between our State and Indiana, and so forth.

I can understand all that, but where is it that the Taft-Hartley Act, by giving the employer the right to select his representatives, where does that enter into the picture? Can he not select them even though the labor union does expand this area of dispute from 11 counties to 11 States? Cannot the Alco Trucking Co. of Kansas City or St. Louis still pick its representatives for the 11-State area, just as much as it can for the 11-county area, although there will be difficulties in the handling of the strike?

Do I make my point clear?

The point in which I am in doubt, and which I do not understand your statement—

Mr. IDOL. He can pick his representative, true, but under the 11-State agreement he would have to be willing to agree, if there is going to be any real bargaining, he would have to be willing to send that representative, together with representatives of other employers, all over the country to a single bargaining table to sit down, if there is going to be any bargaining done.

Senator TAFT. Would it not be this, Mr. Idol: That in the one case he wishes to select the Central States employers' association as bargaining agent, and the unions which are an association, we will say, covering 7 States, the unions say, "No, you have got to appoint an association of 11 employers in the 11 States as your bargaining agent." Isn't that the applicability?

Mr. IDOL. That is exactly what occurred; yes, sir.

Senator TAFT. I mean it is a new idea to me, but I assume that is what you mean.

Mr. IDOL. It was a new idea to everybody in the territory, Senator. We had not run into it out there before.

Senator DONNELL. I can see that, Mr. Idol, and perhaps that answers my inquiry, but suppose now I am operating a trucking company, one trucking company in Kansas City, and I am perfectly willing to negotiate about an 11-county area, in Jackson County, or 11 counties with respect to difficulties in our own State, and I say, "I will appoint Mr. John Smith as my bargaining agent to represent me in that."

"No, no," the union says, "we are going to deal with you now on the basis that includes 13 States, and you have got to come up to us in Chicago and meet with us in the Drake Hotel in Chicago; there will be a great many people together."

Can I not still send John J. Smith up to Chicago? Is there anything, even under the Wagner Act, that would have prevented me from doing that, and is there anything in the Taft-Hartley Act that guarantees to me the right to select my own representative? Does it enlarge my rights? Do I not still have it under both acts? Do I not have the right to pick the same fellow?

Mr. IDOL. Senator, it is section 8 (b)——

Senator DONNELL. 8 (b) (1) (B).

Mr. IDOL. (1) (B).

Senator DONNELL. Yes; I know what you are referring to.

Senator TAFT. They suggest this, they do not want Mr. Smith's signature, they want the signature of the representative of the employers' association representing 13 States. "That is the association we will deal with."

Mr. IDOL. The way they work in practice is, when it comes down to the signing of the contract they require each employer to sign a separate contract, but the negotiations must be carried on, and the theory of the thing is that from the labor side of the picture they will make no deviation between the area agreement for the benefit of any particular employer.

Senator TAFT. Has the Board held that somewhere? Has the Board held——

Mr. IDOL. No; I don't believe the Board has held this.

Senator TAFT. That this section applies to this kind of a situation?

Mr. IDOL. I would have to check that.

Senator DONNELL. Mr. Idol, I can see the tremendous difficulty that arises, as I know it did arise, if I am in Kansas City, as I say, and I say I know conditions here, and I am willing to deal here, but I am not willing to have this ultimate decision of this case based on conditions that exist back in La Porte, Ind.; I want to have mine decided on the basis of conditions in Kansas City, Mo. I can see all that, and to enlarge the scope of this area from the 11 counties to 13 States, I can

see where it puts me, as an employer, at a terrific disadvantage, but I still do not get just where you think the Taft-Hartley Act, by this provision in section 8 (b) (1) (B), making it an unfair labor practice for a labor organization to coerce an employer in the selection of his representatives, applies. I just cannot see that. It seems to me I still have the right, even though the area of dispute is extended from 11 counties to 13 States, I, still operating the Alco Trucking Co., have the right to designate John J. Smith as my representative, either under the Wagner Act or under the Taft-Hartley Act, do I not?

Mr. IDOL. Yes, certainly.

Senator DONNELL. Then, is this section 8 (b) (1) (B), is that the one which applies?

Mr. IDOL. That is the one that we think applies to it, Senator, unfair labor practice for a labor organization to interfere with the employer's right to select a bargaining representative.

Senator DONNELL. Mr. Idol, I wonder if I might interrupt to suggest this: I do not want to take too much time here this morning. Would you mind, when you send in some other bits of data you are going to give, and which you said you would be glad to give something, would you mind just writing out a paragraph or so that gives us just your reasoning on this, and let it be filed as part of your statement? Would you do that?

Mr. IDOL. Yes, I will be very happy to do it.

Senator DONNELL. Thank you very much.

Senator MURRAY. Any cross-examination?

Senator DOUGLAS. No.

Senator MURRAY. No cross-examination. Thank you very much.

Senator TAFT. Thank you very much. It is a very clear and useful statement, with practical examples.

Mr. IDOL. Thank you.

Senator DONNELL. I was impressed the same way, Senator Taft, that this gentleman has given us an exceptionally fine, clear statement, and it is very helpful to at least one member of the committee.

Mr. IDOL. We felt that examples might be more useful.

Senator TAFT. That is what we need.

(Mr. Idol submitted the following prepared statement:)

STATEMENT BY GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and members of the committee, my name is Edgar S. Idol. I am general counsel of American Trucking Associations, the national trade association of the trucking industry, with affiliated organizations including both for-hire and private carriers in each of the 48 States and the District of Columbia. Our offices are at 1424 Sixteenth Street Northwest, Washington, D. C.

No industry in the country, gentlemen, is more vitally affected by the national labor policy and national labor legislation than the trucking industry. Our labor is organized to a point where the teamsters union can, by a strike, close down motor transportation in any metropolitan area and shut off for-hire service in almost any section of the country.

Our board of directors is made up largely of men who own and operate their own companies, and who personally handle their own labor problems. At their last meeting, a resolution was adopted which is reproduced as an appendix to my statement. It expresses approval of the entire Labor-Management Relations Act, but my presentation will be confined to six material changes proposed by S. 249 which our board feels are of the greatest importance:



## I. S. 249 CONTAINS NO PROVISION COMPELLING UNIONS TO BARGAIN IN GOOD FAITH

The success of collective bargaining depends upon requiring both parties to bargain in good faith.

Under both the Wagner Act and the LMRA it has been a common practice in the trucking industry to carry on collective bargaining through employer associations. Under the Wagner Act, it was also common practice for the teamster unions, at the first sign of resistance, to abandon negotiations and break up the employer group by forcing individual settlements on weak employers. To illustrate: In New York City, local 807 has consistently sidetracked the employer bargaining group and ordered a city-wide strike, simultaneously making favorable agreements with individual employers who were willing to sacrifice their long-term interests to gain a short-term advantage in the transportation market.

Prior to 1947, employers caught in this position had no means of requiring the union to bargain with their representative and were usually forced to sign a labor contract which they did not have a chance to negotiate. Compare the situation under L. M. R. A.: Last year, the usual union strategy was followed in New York, but when local 807 bypassed the employer group, an unfair labor practice charge alleging refusal to bargain was filed, and local 807 promptly returned to the conference table.

We urge the adoption of amendments to S. 249 which will require unions as well as employers to bargain in good faith.

## II. S. 249 WILL NOT ADEQUATELY RESTRAIN SECONDARY BOYCOTTS AND JURISDICTIONAL STRIKES

Although the substitute proposed for S. 249 recognizes that jurisdictional disputes and some types of secondary boycotts unjustifiably obstruct the flow of commerce, it overlooks most types of secondary boycotts, and does not establish an effective means of preventing those it proposes to curtail.

The trucking industry has long been used as a most effective organizing weapon by unions affiliated with the A. F. of L. Employees of producers and processors have been organized by the simple expedient of having teamster union members refuse to serve the enterprise. In such cases the employer is forced to recognize the organizing union regardless of whether it represents a majority of his employees. The Labor-Management Relations Act has curbed unwarranted cases of this type.

On October 15, 1947, a business representative of teamster union local 294 was refused permission to enter the premises of Montgomery Ward at Menands, N. Y., without a pass. He immediately called upon all union drivers who were transporting merchandise in or out of the plant to cease working, regardless of the fact that none of them were employed by Montgomery Ward and that there was no strike or dispute between them and their employers. A charge was filed with the NLRB under the provisions of section 8 (b) (4a) of the LMRA and the boycott was called off within 48 hours.

Prior to enactment of the present law, there were many cases in which similar secondary boycotts were continued in force until the union had achieved its objective, while the helplessly involved trucking companies suffered severe losses.

We submit that LMRA's broader prohibition on secondary boycotts, and more important, the procedure authorized for preventing such action should be re-enacted in amendments to S. 249.

## III. S. 249 LEGALIZES THE CLOSED SHOP

Without union security in any form, the teamsters union monopolized its field even prior to the Wagner Act. Other unions have grown to equal or greater power. If it is the studied opinion of this Congress that labor-management relations have not sufficiently matured to remove the prop of union security, the least that should be done is to continue the ban on closed-shop agreements.

Under the closed union an employer is powerless to hire or retain an employee who has been denied or deprived of union membership. This type of union security virtually allows a labor organization to control the size of an industry as well as the selection of its personnel.

The present law works. A tank-truck driver in New York was slightly behind in his dues to teamster local 445. On reporting for work he was met by the local's business agent who reminded him that his dues were in arrears. The driver thereupon offered to pay on the spot by check. The business agent,

however, ordered the man to drive 20 miles to Yonkers, N. Y., and pay in person at the teamster office. When the driver refused, the business agent ordered all drivers off the job and forced the employer to discharge the driver for not being in good standing. The NLRB found that the discharge was unlawful and ordered the driver reinstated, with back pay assessed equally against the employer and the union.

We urge an amendment to S. 249 banning the closed shop and reenacting sections 8 (a) (3) and 8 (b) (2) of the LMRA.

#### IV. S. 249 FAILS TO MAKE UNIONS LIABLE FOR BREACH OF CONTRACT

The philosophy of the proposed national policy favoring the inclusion in labor contracts of procedure for settling disputes is fine, but business agents seldom approach a problem in a philosophical frame of mind—agreement or no agreement.

Parties to a contract should be able to settle any dispute arising over its application or interpretation, without the use of economic force by either side. Both should be able to resort to court action if necessary.

There is ample evidence in our industry that the existence of a right in the employer to enforce labor agreements brought us a large measure of labor peace during the past 19 months.

The fact that there have been but few damage suits brought by all of industry proves that the right has not been abused.

We urge an amendment to S. 249 continuing in effect the pertinent sections of the LMRA.

#### S. 249 FAILS TO GIVE EMPLOYERS THE RIGHT TO SELECT THEIR BARGAINING AGENTS

It is patent to the most casual observer that the ultimate goal of most labor organizations is to extend the bargaining unit to include all companies in a given industry. Just last month the International Brotherhood of Teamsters, AFL, began the formation of what they term national organizing conferences by which locals and joint councils of teamsters may exchange ideas and lay plans for "assisting each other collectively." Their public pronouncements indicate each national conference will cover a single industry or a specialized section of one, such as dairies, warehouse workers, automobile transporters, etc.

The LMRA has successfully arrested the unilateral extension of bargaining areas by force through the simple process of giving an employer the same right to select his bargaining agent which labor has enjoyed since the inception of the Wagner Act.

The law has worked. For example, all for-hire trucking companies in the State of New Hampshire have for some years voluntarily bargained a single labor contract with teamster local 633 for all employees in certain classifications. Significantly, labor and management have been able to consummate their collective bargaining agreements without work stoppages. In the latter part of November 1948, the employers were told by union officials that the bargaining union was to be enlarged to include all of New England and that there would be one agreement for 1949 covering the entire region. Had there been no LMRA provision giving the employers the right to choose their bargaining agent we would have seen the area of bargaining extended by force.

Results of forced extension are too well illustrated by the strife which arose under the Wagner Act in 11 Midwest and Central States. The local unions of the teamsters turned over their bargaining authority to the Central States Drivers Council, an organization independent of the international union. With the aid of the War Labor Board and the Government's taking over 103 recalcitrant companies, that council forced a single agreement upon all affected employers. Followed the demise of the War Labor Board, the Midwest Operators Association, representing all over-the-road employers in seven States west of the Mississippi, renewed their opposition and refused to continue as parties to the 11 Central States agreement. Their position was that conditions in States west of the Mississippi were so different, population so much less concentrated, traffic and transportation needs and conditions so different, that the same contract could not fairly cover the entire area. A 71-day strike tied up all truck lines in the seven States.

Unrest still continues. Employers and unions in the State of Ohio never did adopt the Central States agreement in full. All employers in Missouri and Kansas are seeking to leave the large group and bargain separately for those two States.

Employee representatives in Minnesota have vacillated between obtaining a rider to the area agreement and its complete acceptance.



The Detroit, Louisville, and Tulsa union locals have obtained riders to the area agreement.

We submit that the public interest, as well as that of management and labor, requires that industry-wide bargaining continue to be limited to instances where labor and management voluntarily agree.

VI. S. 249 PROVIDES NO INDEPENDENT MEDIATION SERVICE

The independent Federal Mediation and Conciliation Service has been much more effective in the trucking industry than its predecessor under the Department of Labor.

Employers in the trucking industry have freely used the Independent Federal Mediation Service. They were extremely hesitant to invite its Labor Department predecessors to mediate disputes. Their reasoning may not have been correct, but it was certainly logical. Mr. Ching explained the situation to this Committee so clearly that there is nothing for me to add.

We urge the continuation of the independent service.

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RESOLUTION OF THE BOARD OF DIRECTORS OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

Whereas the Labor-Management Relations Act has made the positions of management and labor at the collective bargaining table and before the National Labor Relations Board more like those of equals; and

Whereas the act gives to a labor contract the sanctity inherent in all other legally composed obligations; and

Whereas the act has materially curtailed concerted union pressure upon motor carriers to effect boycotts against shippers and business associates; and

Whereas the act has substantially eliminated periodic short cessations of production and services resulting from strikes during contract periods; and

Whereas the act has in some measure prevented threatened strikes which imperil the national welfare and safety; and

Whereas the act has tended to diminish the number of economic work stoppages by making impartial mediation available to management and labor during contract negotiations; and

Whereas the act guarantees to an individual employee the right to engage in or refuse to engage in union activity; and

Whereas the act reserves to employees the right to determine by secret ballot whether they desire compulsory union membership as a condition of continued employment; and

Whereas the act democratically reserves to employees the privilege of changing or withdrawing union representation; and

Whereas the act protects workers from misuse of union treasuries by requiring the filing of statements of financial expenditures; and

Whereas the act has restored the employers' prerogative in recruiting and selecting new personnel and has prevented indiscriminate removal of competent workers from their jobs by the closed-shop device; and

Whereas the act serves the national security by requiring union officials to file non-Communist affidavits; and

Whereas the Labor-Management Relations Act of 1947 embraces every phrase and item of ATA's policy on industrial relations adopted by the board of directors on January 17, 1946: Therefore, be it

*Resolved*, That the American Trucking Associations Board of Directors in convention assembled this 13th day of October 1948 for the afore-cited reasons and others, believes the Labor-Management Relations Act of 1947 has had a salutary effect upon industrial relations, has generated increased national production, and has thereby worked to the distinct benefit of employers, workers, and above all the public; be it further

*Resolved*, That this resolution be recorded in the annals of American Trucking Associations, Inc., as the sentiments of the American trucking industry; and be it further

*Resolved*, That a copy of this resolution be placed in the hands of each and every Member of the United States Congress.

Adopted by the board of directors of the American Trucking Associations, Inc., October 13, 1948.

(Subsequently Mr. Idol addressed the clerk as follows:)

AMERICAN TRUCKING ASSOCIATIONS, INC.,  
Washington 6, D. C., February 21, 1949.

MR. EARL B. WINCEY,  
*Committee Clerk, Senate Committee on Labor and Public Welfare,  
United States Senate, Washington, D. C.*

DEAR MR. WINCEY: At my appearance before the Senate Committee on Labor and Public Welfare February 17, Senator Donnell asked that I furnish for the record citation of the decision by the National Labor Relations Board referred to at page 4 of my prepared statement.

The case in question was one where an employer was compelled by a strike to discharge a driver for not being in good standing, with the NLRB subsequently finding the discharge unlawful and ordering the driver reinstated with back pay assessed equally against the employer and the union. The decision to which I refer was Intermediate Report No. 1729, dated October 7, 1948.

Senator Donnell also asked that I furnish, for the record, a statement explaining our contention that the right given under the Taft-Hartley Act to employers to select their bargaining agents has arrested the unilateral extension of bargaining areas by the unions. A check indicates that there have been no decisions by the National Labor Relations Board on this point. However, the argument has been successfully advanced by employers in their negotiations with unions as is illustrated by the following:

In the New Hampshire case referred to at page 5 of my prepared statement, employers in New Hampshire had for several years voluntarily bargained a single contract with teamsters local 633, representing New Hampshire employees only. Last fall, parties entered into negotiations for a new contract and the employers were confronted with a demand that they affect a so-called New England area agreement covering all the New England States. The employers took the position that they would not be compelled by force to bargain as a group with all other New England employers; and that the demand made upon them was in effect a refusal by the union to bargain in good faith with the agency of the employers' own choosing. The question was argued back and forth for some time, but the employers were not forced to take the case to the NLRB. The unions gave up their position and although a final contract has not been consummated, the employers are now bargaining with local 633 for the New Hampshire area alone.

On reconsideration of the matter, I believe it is more proper to say that the right of an employer to select his bargaining agent, plus the requirement that unions bargain collectively have arrested the forced expansion of bargaining areas by the unions.

Very truly yours,

EDGAR S. IDOL, *General Counsel.*

Senator MURRAY. Mr. Ira Mosher.

Mr. Mosher, will you give your full name, and anything concerning your background that you wish to have in the record. We would like to have the names of the corporations or organizations that you hold office in.

**STATEMENT OF IRA MOSHER, CHAIRMAN, FINANCE COMMITTEE,  
NATIONAL ASSOCIATION OF MANUFACTURERS, ACCOMPANIED  
BY CARROLL E. FRENCH, DIRECTOR, INDUSTRIAL RELATIONS  
DIVISION, NATIONAL ASSOCIATION OF MANUFACTURERS; AND  
R. S. SMETHURST, GENERAL COUNSEL**

MR. MOSHER. My name is Ira Mosher. I am chairman of the finance committee, a director and a member of the executive committee of the National Association of Manufacturers.

The National Association has more than 15,000 member companies, and 83 percent of which are small- and medium-sized businesses, with less than 500 employees.

Senator TAFT. Will you give us your personal business and other background?

Mr. MOSHER. At present I am president of Ira Mosher Associates, a consulting organization in New York, a very small one, a personal one.

My background is some 34 years of advisory manufacturing experience. I was in the leather business in the Middle West, New England, and in the optical business for nearly 25 years.

I am connected with various small manufacturing companies today in an active capacity. My experience has largely been manufacturing.

Senator TAFT. You say Ira Mosher Associates is a consulting firm?

Mr. MOSHER. Yes.

Senator TAFT. Consultants on industrial problems and labor problems?

Mr. MOSHER. Personal relations and public relations.

Senator MURRAY. You hold office in a number of corporations?

Mr. MOSHER. As a director; I hold no staff office.

Senator MURRAY. You are vice president and general manager of the American Optical Co.?

Mr. MOSHER. I was for some 24 years. I am director of Russell Harrington Cutlery Co.

Senator MURRAY. Also McLaurins-Jones, of Brookfield?

Mr. MOSHER. McLaurins-Jones, of Brookfield.

Senator MURRAY. C. C. Winter?

Mr. MOSHER. I am no longer director; I ceased my association.

Senator MURRAY. Are you president of the Associated Industries of Massachusetts?

Mr. MOSHER. I was for 2 years, and I am now chairman of the board with that association.

Senator MURRAY. You may proceed with your statement.

Mr. MOSHER. I welcome the opportunity to appear before the committee. I look back on various experiences in the past, and I think you have been pretty patient with me, and I want to be of all the help I can, Senator.

In the first place, the promotion of labor peace, in my opinion, is the most important thing ahead of us in this country today. The economy is going through a period of adjustment.

Senator DONNELL. Might I interrupt, with the chairman's consent, to state this about our procedure here, to tell you something about the time element: The time suggested includes the confining of the opening statement of the witness to 10 minutes, which I realize is a very short time, and then a certain Senator designated on our side of the tables, is entitled, in your case, to 30 minutes of examination.

Mr. MOSHER. Yes.

Senator DONNELL. Senator Smith, of New Jersey, was to have conducted that examination, but it was necessary for him to be at a very important meeting this morning, and it is my understanding that that role will, in part at any rate, fall to my lot, and I just wanted to suggest to you, if I may, that your initial statement, if you will make it somewhat of a summary, and confine it to the 10 minutes, then I will endeavor to ask a few questions, if I may.

Senator TAFT. May I ask that Mr. Mosher's complete statement be made a part of the record.

Senator MURRAY. Yes.



Mr. MOSHER. I shall keep my remarks just as brief as I can.

Senator DONNELL. It is not said in any sense of criticism.

Mr. MOSHER. I am not going to try to make a speech anyhow. I just want to point out that the promotion of labor peace is terribly important. There is nothing more important in this country, and it is not a political football. It has got to be looked at for what it is, because we have got to have this peace to carry our economy through this very troublesome period.

Now, so far as the Taft-Hartley Act goes, I want to say that nothing sacred exists about that act, in my opinion, and it is not my intention to try to defend the act as much, but we have to recognize that critics of that act have been very successful in their efforts to make it seem as though it was labor's crucifixion, and you do not need anything else except the black-and-white record from Government bureaus to prove that that is not so.

The unions have gained in members, in strength, and in influence under the act.

I have talked to a good many of my friends in labor on a personal basis, and I have yet to find the man who can name one specific instance where it has hurt. On the contrary, I have had more than one man tell me that he has had the Taft-Hartley Act do the job for him. Those are personal conversations, sir.

Now, an unstable policy is going to unstabilize the national economy, and that we cannot afford.

In my brief, I mention the joint committee reports, the reports about the union predictions, and make the statement that the union predictions have not materialized. They have gained. It is a picture of progress, and I do not see anything in this picture that calls for the scrapping of the Labor-Management Relations Act, and throwing labor-management relations back to that prolonged and bitter industrial warfare that we had under the Wagner Act prior to the passage of the Labor-Management Relations Act.

Various quotations, one in particular, from the Assistant Secretary of Labor, John Gibson, back up that statement.

Now, the bill under consideration, S. 249, would repeal that act. Under the proposed bill, employees, employers, and the general public would all lose protection against abusive practices that went on for a good many years, and there are hundreds and hundreds of thousands of words in your records right now over the past few years that prove that statement.

I just want to mention certain points in my brief, the 25 specific items in paragraph form, followed by some 9 others, some 34 in total, that are proposed to be done away with. I will not take time to do anything more than read some of the more important ones.

The union duty to bargain, free speech, the foreman issue, compulsory union membership, secondary boycotts, union contract responsibilities—I am reading from page 4—national emergency strikes, and so it goes. They are all important, and they are all important, to the public. They are all important to the individual employer and the individual employee, and so we go on through that kind of a program.

Now, I said I was not going to stand up for the Taft-Hartley Act, as such.

My brief, from page 7 on, goes into the principles of the National Association of Manufacturers. On page 7 we start to list those prin-

ciples. There are 10 of them, and I think I should point out to you, as probably many of the Senators with whom I have discussed this same subject before know, that these principles were adopted in December of 1945, following the Labor-Management Conference of that fall. Some of those principles are in the Taft-Hartley Act. A great many of them are not. Some of them are not in it at all. Some are in only in part. We have had experience since that time, going on 3 years, and I have checked those principles, as they were first adopted, and, frankly, gentlemen, there is no change to be made.

Now, I do not want to give you the idea that we do not think that changes can be made that would be good for the good of all. But, frankly, experience has not shown any changes in those basic principles which were the ones adopted by the employer side in the conference of 1945.

I just will take time enough, if I may, to read two or three of them: The principle of equality between labor and management with respect to their obligations and responsibilities: The brief carries on for some pages, and I would like to emphasize again, if I may, that the details that I give are all-important.

Now, the chief argument against the Taft-Hartley provision making unions responsible is said to be that it is unnecessary because unions were already responsible under State laws.

I just want to point out that the first development, almost the first development under the Taft-Hartley Act, was for the unions to demand contract clauses designed to nullify the statutory provision.

In other words, the inconsistency is obvious, and I have to point out that that inconsistency is maintained pretty much through the arguments against the Taft-Hartley Act.

I also want to point out to you that it is the public which demands that responsibility. It is not the employer anywhere near as much as it is the public.

The second principle is that there should be no compulsion in regard to membership or nonmembership in a labor organization. In other words, that means the closed shop. The brief, I think speaks for itself. We shudder to think of the effect of a proposal that the State laws shall be abandoned and circumvented by a Federal law.

When we stop to figure that in many of these States, there are some 16 States of the 48 now which have laws of one kind or another in this group, and in several of those States those laws were passed by public referendum; it was the public which demanded that situation and that, gentlemen, I submit to you, we should not forget.

Industry-wide bargaining is our third point. You all know the subject. I just want to point out in that connection——

Senator DONNELL. You mean the thesis that industry-wide bargaining is contrary to successful collective bargaining in the public interest?

Mr. MOSIER. Yes, sir.

Senator DONNELL. That is your opinion?

Mr. MOSIER. That is our basis.

Senator DONNELL. Yes.

Mr. MOSIER. I want to point out that the national emergencies that have occurred, there are nine in number, I believe, all come from a form of industry-wide bargaining. Without industry-wide bargain-



ing you would not have that situation. It is a combination of industry-wide bargaining and the closed shop which creates a monopolistic situation, a set of conditions under which monopoly is allowed to run wild, and we have those national debacles.

I submit to you gentlemen that unless we correct the basic conditions, you can have all the laws that we can find time to pass, and they will not correct the situation.

Our fourth issue is the abuses of economic power, and that involves secondary boycotts which ought to be curbed as a matter of national policy.

We do not like secondary boycotts. They cover a wide field. I have listened to your previous witnesses, a very important segment—

Senator DONNELL. Mr. Mosher, I might tell you that you have used 12 minutes.

Mr. MOSHER. I want to point out that S. 249 does not begin to cover the situation.

Freedom of speech, unbiased administration of the law, I want to point out—I will not take the time to read it, of course, as you indicate that you have had testimony alleging that I took certain positions and that management, as a whole, took certain positions.

I just want to point out that the brief contains the data with direct reference to the record so far as there is a record, that is public or private, so far as that is concerned.

We want to see the Conciliation Service maintained in its present form as a separate service, and we have never had any other opinion, regardless of other conclusion that might be drawn.

In that connection with respect to Conciliation Service and point 7, encouragement of settlement of industrial disputes, collective bargaining is a process between management and representatives of the rank and file employees, and not on a national over-all basis.

I just want to take time, if I may, Senator, to point out what has happened. We have listened to a lot of testimony here, and we have heard a lot of comments made in recent years.

I wonder how many of us remember that back in January 1939, Senator Walsh, of Massachusetts, a very old friend of mine, incidentally, introduced Senate bill 1,000, and I recommend that if members of the committee have not seen it that they study it, because it was an A. F. of L.-backed bill, yes, at a time when the A. F. of L. thought it was not getting quite as much as somebody else was getting before certain tribunals in this country.

In that bill they agreed to keep foremen separate; they agreed to have greater protection for craft unions; they agreed to employers' free speech; they agreed to a curb on industry-wide bargaining to the extent that the appropriate unit was of the employees of one employer.

Now, bear in mind, gentlemen, there was presented an A. F. of L.-sponsored bill.

I also want to call your attention to the Smith bill which was passed, H. R. 6149, which was passed in 1941. Again it was an A. F. of L.-approved bill, as it came out of that committee. How far the approval continued, as the vote came on the House floor, is a matter of definition.

Then, there was the Smith bill of 1940, proposing to change the Wagner Act, which, in effect, went a long way on free speech, and the various things that are now in the Taft-Hartley Act. So I am com-

pletely at a loss to understand, based on that record, how we find this terrific opposition that we are up against today.

The ninth point in my brief was a sound national labor policy as against violence.

The tenth one is that the collective-bargaining process should be restricted to matters which can be handled competently, effectively, by negotiation. That is on page 25, and has to do with pensions and welfare funds.

Now, gentlemen, I have read you nothing but certain titles. I want to emphasize again that our national labor policy will go backward under the proposed bill. It proposes to go back to a policy that was a proven failure, and there is nothing more vital in this whole question of our national economy than labor peace, because we have got to get production not only to keep our own economy where you all want it, but we have got to do it for the rest of the world, too, so it seems, and the only hope for industrial peace is through the preservation of a sound national labor policy.

Senator DONNELL. Thank you, Mr. Mosher.

Mr. Mosher, may I ask you some questions now?

I notice it is about 7 minutes after 11, and I will endeavor to keep my questioning within a reasonable portion of the 30 minutes, and doubtless some of the other members on our side may desire to interrogate you, too.

Would you tell us, please, when the National Association of Manufacturers was formed?

Mr. MOSHER. 1895.

Senator DONNELL. So it has been in existence——

Mr. MOSHER. In Cincinnati.

Senator DONNELL. I beg pardon?

Mr. MOSHER. 1895. It has been in existence for 53 years.

Senator DONNELL. Fifty-three years; yes, sir.

Take, for instance, its presidents over a period of time. My old friend, Mr. Robert L. Lund, of the Lambert Pharmacal Co. of St. Louis, was a president.

Mr. MOSHER. 1932, '33, or '34.

Senator DONNELL. Was Mr. Henning Prentiss a president? I mention him because he was a friend of mine—I have known him many many years; he is of the Armstrong-Cork Co.—was the head of it also?

Mr. MOSHER. Yes, sir; in the thirties or early forties. I would have to look up the exact date.

Senator DONNELL. And was our friend, a gentleman of this committee, a friend of mine, Albert Hawkes, of the Congoleum Co. of New Jersey, was he also a president?

Mr. MOSHER. No; I do not think that Senator Hawkes was president.

Senator DONNELL. Of the United States Chamber of Commerce?

Mr. MOSHER. Yes.

Senator DONNELL. Now, Mr. Mosher, you say the National Association of Manufacturers has more than 15,000 member companies and 83 percent of them are small and medium-sized businesses with four and five hundred employees; is that right?

Mr. MOSHER. Yes, sir.

Senator DONNELL. There has been a great deal of reference, from time to time, to your organization, Mr. Mosher, and some of it has, at least, raised—indicated that some of the members of our com-

mittee are, well, I will put it mildly, somewhat interested in the opinions of your association, and think they may not be in accord with the national welfare.

I want to ask you some questions about your testimony if you will turn to page 3, please. Among the provisions of the Labor-Management Relations Act, the Taft-Hartley Act, which you say would be eliminated by the bill before this committee is, and the first one which you mention, is the union's duty to bargain.

Mr. MOSHER. Yes, sir.

Senator DONNELL. Now, Mr. Green, William Green of the American Federation of Labor, was on the stand a few days ago and, generally speaking, I think his position was that that is an absolutely unnecessary provision, just academic, not needed at all, because that is what labor unions are formed for, and you do not have to compel them to do that which is their purpose.

What do you have to say as to Mr. Green's point on that?

Mr. MOSHER. I think the record, as I would like to compile it and as I suspect you have it now, will show that under the period of the Wagner Act, the unions repeatedly refused to bargain.

Senator DONNELL. Would you mind compiling that data for us and sending it to us, which I will ask to have, Mr. Chairman, incorporated and printed in full when it is received?

Mr. MOSHER. I suspect it is back in my various testimony in 1946, 1947—1945, 1946, and 1947.

Senator DONNELL. We would like to get it incorporated in the record so that we will be able to read it back without any reference to anything else.

Mr. MOSHER. May I add, Senator, that the witness who preceded me, pointed out one of the very, very important situations where the union refused to bargain, except on their own bases.

Senator DONNELL. I am not going down all these different points in any detail, and a good many of them I will not ask you about at all.

Turn to page 4, please, that is No. 7, union contract responsibility. Do you know of any reason why a labor union should not be responsible for a breach of contract just as much as a corporation or individuals with which or with whom its contracts are liable?

Mr. MOSHER. I cannot conceive of any situation whereby either party signing a contract should be allowed to go back on what he agrees to do.

Senator DONNELL. There has been some point made that this is very harsh on the Taft-Hartley Act by throwing these cases into the Federal courts. What do you have to say on that point?

Mr. MOSHER. Well, I do not know that I am qualified to discuss the situation as between courts, because I am not an attorney, except that, as we settle these disputes close to home, close to where they occur, we get a much better, easier, smoother, and much more satisfactory settlement.

On the other hand, I think the record shows quite clearly that up to date there have been no damages assessed against a union in any single case.

Senator DONNELL. Yes, sir.

Mr. MOSHER. In my personal opinion, I may add—I do not think the quantity of damages is significant, I do not think it is important, but

I think that the establishment definitely of the union's responsibility should be maintained as it is substantially in the Taft-Hartley law.

Senator DONNELL. And you recall, do you not, Mr. Mosher, that in the bill itself is a distinct provision to the effect that the judgment, if any, that is obtained against a labor organization, a labor union, is to be paid solely out of the assets of the union as an entity, and not out of the assets of the individual members?

Mr. MOSHER. Yes; I well realize that there is no personal responsibility on the part of the union members.

Senator DONNELL. In other words, the Taft-Hartley Act is not at all subject to the criticism so frequently leveled at the Danbury Hatters case, that by a judgment you could go in and ruin the individual members of the union.

Mr. MOSHER. Yes.

Senator DONNELL. It has been carefully safeguarded and prevented in the Taft-Hartley Act.

The particular language to which I refer is in section 301 (b), reading as follows:

Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

You are familiar with that.

Now, Mr. Mosher, as to the union's financial reports, do you see any objection to that, and have you heard of any objection from labor-union friends of yours as to the requirement that the unions file financial reports?

Mr. MOSHER. I have heard a lot of language from a national standpoint to the effect that this was an unfair request to make of labor.

Senator DONNELL. I beg your pardon; I did not get that.

Mr. MOSHER. I heard a lot of comments made from a national standpoint that it was unfair to ask the unions to make financial reports.

I get from the individual union people with whom I have talked in various parts of the country that they think it is a good thing. I do know this, that the individual members of unions, certain unions, not all of them, of course, but of certain unions—are very glad to have these reports.

I think it is no more fair, no less fair, to the unions than it is to other organizations that have to make reports of this type.

Senator DONNELL. Do business corporations which represent management, under the laws of many States, have to make similar reports?

Mr. MOSHER. Quite complete reports.

Senator DONNELL. Yes.

As to your item No. 24, Strikes by Government Employees, do you see any possible objection to the prohibition against Government employees striking?

Mr. MOSHER. I do not like to see a prohibition against strikes in any case. I do not like to take away from any individual the right to work for any reason at all, by way of strikes or otherwise. But I think, in view of our general picture as this country has grown up, that there is one thing we cannot tolerate in this national economy of ours, and that is a strike against ourselves.



In other words, if we work for the Government we cannot strike against the Government. I think such strikes have got to be completely eliminated.

Senator DONNELL. Take, for instance, the employees of the post office. Would you regard it as a healthful conduct if they could tie up the postal service and ruin the interchange of communications between our various States by way of mail facilities? Would you regard it as advisable or conceivable that we permit any such thing as that to occur?

Mr. MOSHER. I cannot understand how it could possibly be allowed to occur.

Senator DONNELL. Yes.

Mr. MOSHER. And it also applies to local strikes that are not under Federal jurisdiction—firemen, policemen, teachers—if you please.

Senator DONNELL. Mr. Mosher, I have selected just a few of the provisions of the Taft-Hartley Act which you point out in your statement would be eliminated by the bill now before this committee.

Did you happen to see a compilation of a poll which was in *Look* magazine, if I am not mistaken, that caused it to be made some months ago with respect to specific provisions of the Taft-Hartley Act, in which employees, I think, were asked to express their opinions as to those particular provisions, and as applied to a great number of those provisions or a considerable number of them, the employees, generally speaking, were in favor of them, and they were large provisions, important provisions, too, of the Taft-Hartley Act?

But when the final question was asked, "Are you in favor of the Taft-Hartley Act or against it?", they were against it. Did you see that poll?

Mr. MOSHER. I saw that poll, and also the Claude Robinson poll.

Senator DONNELL. What did it show?

Senator TAFT. It was the same thing; the Claude Robinson poll was published in *Look* magazine.

Mr. MOSHER. It was the same thing. On individual questions, as you say, the individual union members found little or no objection. Their votes ran just about the same, union or nonunion. But, as you say, when it came to the Taft-Hartley Act, I suppose, a form of semantics, if you please, the Taft-Hartley Act has been made to sound bad.

Senator DONNELL. Yes.

Mr. MOSHER. For no definite reason that I can find.

Senator DONNELL. Now, let me ask you whether or not you attribute any part of that general opinion that has prevailed that the Taft-Hartley Act is iniquitous and bad and ruinous, do you attribute any considerable portion of that to the utterance of Mr. Green, president of the American Federation of Labor who, although a fine gentleman, has made a fine contribution to our country, testified that he himself in public speeches and private addresses, called the Taft-Hartley Act a "slave labor act"? Do you regard that as having influence in creating this opinion?

Mr. MOSHER. I think that is one of the basic reasons for the opinion, and similar comments.

Senator DONNELL. Do you regard the statements in some 300 or 315 labor publications that have been circulated over the country, the statements that the Taft-Hartley Labor Act is a slave labor act, and

cartoons there showing the employees bound in chains, and dragging themselves around, and looking emaciated, and all about to drop over from slavery, do you think that has had some influence, too?

Mr. MOSHER. That is evidently part of the campaign to bring the law into public disrepute with no attempt to discuss what is in the law itself.

Senator DONNELL. Yes. Do you think that the campaigns that have been made by some gentlemen in politics who have used similar language, and notably very recently a broadcast all over the United States by Senator Francis Myers of Pennsylvania, the Democratic whip of the United States Senate, in which he said the Taft-Hartley Act shackles labor, do you think that tends to create an opinion that the Taft-Hartley Act is iniquitous? Do you think it has that tendency?

Mr. MOSHER. I can draw no other conclusion than that.

Senator DONNELL. And Senator Taft over here and Mr. Hartley as arch fiends who are preying on the public? That conclusion could readily be drawn, could it not?

Mr. MOSHER. I think it is a fair conclusion. [Laughter.]

Senator DONNELL. Yes, sir.

Mr. MOSHER. I happen to know both of them.

Senator TAFT. "Lucifer, by name."

Mr. MOSHER. Senator, I happen to know both gentlemen quite well. [Laughter.]

Senator HUMPHREY. Will the Senator from Missouri yield for a moment?

Senator DONNELL. Just a moment.

Senator HUMPHREY. Just a point of information, my friend.

I noticed you mentioned the polls that were taken on the Taft-Hartley Act.

Senator DONNELL. That was not the Gallup poll about the election.

Senator HUMPHREY. But a poll is a poll for all that. [Laughter.]

Senator DONNELL. That is Shakespeare—no, it is Job VII: XI. where that comes from.

Senator HUMPHREY. I was of the opinion that possibly the poll taken on the Taft-Hartley Act was but of the prophetic nature as to the validity of polls that were taken on even more fundamental issues such as things that happened in November.

I think maybe we ought to discount the whole effect of polls, except the Minnesota poll in the election, which was right.

Senator DONNELL. Thank you, Senator, for your contribution.

Senator TAFT. I thought the Senator put in some polls on the Taft-Hartley law.

Senator HUMPHREY. I supported the Minnesota poll. [Laughter.]

Senator DONNELL. Mr. Mosher, you refer to something there that I think is extremely fundamental. Is it your observation that the average citizen, just the run-of-the-mine of us, all of us, legislators and everybody else, is it your observation that there is a mighty small proportion of our people who have even read the Taft-Hartley Act?

Mr. MOSHER. I would not have any way of knowing, and I am not much of a gambler, but I would suspect that it would be a very minute percentage.

Senator DONNELL. Yes.

Mr. MOSHER. And of those who have read it, only a small percentage get the import of it.

Senator DONNELL. Yes. Well, that is perfectly natural, is it not, Mr. Mosher? [Laughter.]

That is perfectly natural, is it not, from the fact, if I may complete this question—I say it is perfectly natural from the fact that the Taft-Hartley Act was not a new bill, but it is an amendment to the Wagner Labor Relations Act, and incorporates things and takes things out.

For instance, on this closed shop, you will not find the words “closed shop” in either the Wagner Act or the Taft-Hartley Act, I do not think. Certainly it is not in the Taft-Hartley Act, is it?

Mr. MOSHER. I would not be able to say.

Senator DONNELL. I do not think it is.

Mr. MOSHER. I find trouble with some of the language.

Senator DONNELL. It is obvious that the very nature of the legislative treatment, namely, the taking of the former act, the amendments of it, by insertions and withdrawals and all that mass of language that is shown here which was necessary to amend the act in these respects, it is perfectly obvious that the average one of us, and this is not said critically at all, it is perfectly evident that just the run-of-the-mine of our citizens have not read that act, is that not true?

Mr. MOSHER. That is true.

Senator DONNELL. Yes, and in large part the opinion about this terrific iniquity of this act, and how it is just driving us into slavery, comes from all of these extravagant expressions about slave labor and shackles, and pounding of the desk, and political speeches and radio broadcasts denouncing the act. Is that not a fact, according to—

Mr. MOSHER. That is quite true.

Senator DONNELL. Now, Mr. Mosher, if you will turn to page 7 of your statement, you set out certain principles which the National Association of Manufacturers has developed through at least, I take it, the 53 years of your experience.

Have you been conscious that the National Association of Manufacturers was out with ulterior purposes to try to enslave labor, enslave somebody or ruin labor, and just profit at the expense of iniquitous damage to the other segments of our society?

Mr. MOSHER. I think I know employers pretty well, sir, and I know that there is no good employer—there are exceptions, we all know that—

Senator DONNELL. Why, certainly.

Mr. MOSHER. Their first object is to run that plant.

Senator DONNELL. Yes.

Mr. MOSHER. And you cannot run that plant without labor peace, and without labor-management relationships on a sound basis. That is the only way we can run our plants, and the only way we can make money.

Senator DONNELL. And you would like to have the good will of the employees under you?

Mr. MOSHER. You cannot run a business if you do not have that.

Senator DONNELL. You would like in the morning to have them feel friendly toward you, in order that they would want to turn out the best products.

Mr. MOSHER. The only way we can get enough efficiency to compete and stay in business.

Senator DONNELL. Let us take some of these principles of yours. They sound pretty good to me. The first is the principle of equality. It seems to me that I have heard about liberty and equality and fraternity for a good many years, and other similar expressions, principles of equality under law. That is one of these fundamental principles that you have told us of here that the National Association of Manufacturers has stood for, is that right?

Mr. MOSHER. That is No. 1 in order and in importance.

Senator DONNELL. No. 1.

Now, we have had a lot of illustrations in the record here of where this bill, the Taft-Hartley Act, undertakes to provide for this equality, for instance, on this matter that we discussed a little while ago, about the obligation to bargain collectively.

The Wagner Act made it obligatory on management to bargain collectively, but did not make it obligatory on labor though; that is right, is it not?

Mr. MOSHER. That is right.

Senator DONNELL. And along comes the Taft-Hartley Act and says what is sauce for the goose is sauce for the gander; if management has got to bargain collectively, labor has got to bargain collectively. That is right, is it not?

Mr. MOSHER. That is right. Yes, sir.

Senator DONNELL. And according to this data that you are going to compile and send in to us, you have found it in your own personal experience to be true, and not, as Mr. Green has indicated, an unnecessary provision using up paper and ink?

Mr. MOSHER. It is a very necessary provision, and the record will support that contention.

Senator DONNELL. Yes, sir.

Now, the second point that you make, you say: "As a matter of principle, there should be no compulsion with respect to membership or nonmembership in a labor organization."

That is a pretty wholesome principle, do you not think, Mr. Mosher, under our general views of liberty in this, our country?

Mr. MOSHER. Well, aside from the ethics of the situation, I think fundamentally that is the only way in which you can operate; the only way you can operate is under that principle.

Senator DONNELL. And then, on page 13, you say:

Industry-wide bargaining is contrary to successful collective bargaining and public interest.

Now, that is at least partly due, the soundness of that principle, to the fact that conditions vary in one section of the country as compared with another, and also that industry-wide bargaining may lead to monopolistic practices. Do not both of those elements enter into that point?

Mr. MOSHER. I would agree with you excepting your last point that they might lead; I think they do lead.

Senator DONNELL. They do lead.

Mr. MOSHER. And they can end nowhere else except in monopoly.

Senator DONNELL. Those are some of the fundamental reasons that your organization stands for the proposition that industry-wide bargaining is contrary to successful collective bargaining and the public interest; is that right?

Mr. MOSHER. Yes, sir.



Senator DONNELL. And on this matter of monopoly, if one man, Mr. John L. Lewis, to be exact, can bargain for all the coal industry in the country and he says that you have got to close down, it is a mighty serious situation that there is no competition there against him; isn't it?

Mr. MOSHER. Yes; and Mr. Lewis picks his own bargaining agents for the employers, too.

Senator DONNELL. Now, on the fourth of your principles—

The CHAIRMAN. Let us get that statement.

Senator DONNELL. Would you read the statement?

The CHAIRMAN. You say, Mr. Lewis picks his own agents?

Mr. MOSHER. Mr. Lewis has picked the representatives of the employer and refused to do business with anybody else.

The CHAIRMAN. That is, he selects representatives of the employers?

Mr. MOSHER. My statement is a broad one, sir. He has on occasion said he would only do business with certain people on the employer's side. I know of one particular case where—I think the record will show this; I would have to check it; he refused to do business with an association of manufacturers, and said he would only do business with them individually.

The CHAIRMAN. Was his strike against the association of manufacturers?

Mr. MOSHER. I did not get your question.

The CHAIRMAN. Are you not talking about bargaining?

Mr. MOSHER. Yes, sir.

The CHAIRMAN. Talking about bargaining?

Mr. MOSHER. Yes, sir.

The CHAIRMAN. Whenever did Mr. Lewis carry on a strike against the association of manufacturers?

Mr. MOSHER. Well, he never did, sir.

The CHAIRMAN. No. Now, I cannot understand your statement. You said he would not bargain with an association of manufacturers. I cannot understand that statement.

Mr. MOSHER. Well, Senator, I was asked a question about Mr. Lewis' position, which led me to my remark. The point of the question was in regard to monopoly. I made the comment that on certain occasions Mr. Lewis had picked—tried to pick, at least—representatives to represent the employers on the other side, not the National Association of Manufacturers; in the coal industry alone.

One individual I know of—

The CHAIRMAN. National association of coal operators?

Mr. MOSHER. Is it the Southern Coal Operators? There are two groups, as you know; the Northern and Southern groups. This was the Southern group. I believe the record shows Mr. Lewis flatly refused to do business with Mr. Moody, who had been picked by the Southern Coal Operators to represent them.

The CHAIRMAN. Did he have a reason?

Mr. MOSHER. I suppose he could supply a reason, sir, but the employers, I think, should have the very definite right to select their own representatives.

Senator DONNELL. Certainly, if labor has the right to select its representative, there is no reason why management should not select its representative.

Mr. MOSHER. None at all, that I know of.

The CHAIRMAN. What I want to know is whether this is an isolated case or whether it is a general case, that labor generally has been unwilling to bargain with the persons chosen by the employers to bargain with.

Senator TAFT. Mr. Chairman, may I suggest that both the Southern Coal Producers and the National Coal Association have requested permission to testify, and they probably know more about the specific case. I think I know something about it, and I think I can perhaps bring it out in Mr. Mosher's testimony, but I think we could get much more satisfactory information on that particular case than we can through these means.

Mr. MOSHER. I only know it second-hand, sir.

The CHAIRMAN. That is all right. If it is a second-hand, hearsay bit of evidence, that is perfectly satisfactory.

Mr. MOSHER. It is in the record, though.

Senator DONNELL. You are not withdrawing the statement, are you?

Mr. MOSHER. No, sir.

Senator MURRAY. In what record?

The CHAIRMAN. It is in our record.

Senator MURRAY. You mean in this record, or some other record?

Mr. MOSHER. It is in the record of the Coal Association in other negotiations.

Senator MURRAY. Not before us.

Mr. MOSHER. Not that I know of.

Senator DONNELL. Now, Mr. Mosher, the next point that you mention in your statement is on page 15. It is the fourth point:

Abuses of economic power (certain strikes and secondary boycotts) should be curbed as a matter of national labor policy.

I am not going into all the detail of the secondary boycott business, but, as a general proposition, such abuses as you refer to in that section are abuses that you regard as contrary to the welfare of the people of the Nation. That is right, is it not?

Mr. MOSHER. Contrary to public good.

Senator DONNELL. Contrary to public good, and you are against them, and you have listed them here in this statement which is to be placed in the record in full.

That is right, is it not?

Mr. MOSHER. Yes; in the record in full. They cover a very wide variety of boycotts.

Senator DONNELL. Yes.

Now, your fifth point on page 17:

Freedom of speech as between employers and employees is a basic principle of sound industrial relations.

Well, now, under the Wagner Act labor had a perfect freedom of speech but there had been at least raised a very great question as to whether management had it. That is a conservative statement of it, is it not?

Mr. MOSHER. As the law, the Wagner Act, was administered, the employer certainly did not have it.

Senator DONNELL. The employer did not have it; no, sir.

Now, the law, the Taft-Hartley law, comes along and provides:

The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act—that would be those referring to labor and management, either, I take it—

if such expression contains no threat of reprisal or force or promise of benefit.

Mr. MOSHER. Yes.

Senator DONNELL. You think it is a sound declaration, do you?

Mr. MOSHER. I think it is sound. I do not think that the present law is administered in all respects the way it should be, but I think the record shows there are decisions before the Labor Relations Board now that have attempted to control employers on occasions.

Senator DONNELL. Yes; but you think the expression of principle as set forth in the Taft-Hartley Act that I have just read to you is sound and should not be abandoned in any new legislation.

Mr. MOSHER. It certainly needs to be kept as a matter of statute.

Senator DONNELL. I note, with much interest, Mr. Mosher, that on page 17, near the bottom of your statement, you quote Mr. Green, himself, Mr. William Green, president of the American Federation of Labor, who testified before the House Labor Committee in 1947, page 1671 of the House hearings, as saying:

"I am willing that the Wagner Labor Act be amended so that an employer may engage in free speech, just as anybody else.

That was his testimony, was it?

Mr. MOSHER. Yes, sir.

Senator DONNELL. Now I pass to your next, your sixth point, and we are getting along pretty fast there:

The unbiased and impartial administration of laws is basic to any successful national labor policy.

You devote in large part, perhaps entirely—I have not had this long enough to be sure of that, your discussion there as to this proposition of whether or not the Conciliation Service, the Mediation and Conciliation Service, should be in the Labor Department or should be an independent agency, and you quote here on page 18 the official minutes of the employer delegates meeting, I take it, of your organization. Is that right?

Mr. MOSHER. No; this was President Truman's Labor-Management Conference in the fall of 1945.

Senator DONNELL. Fall of 1945; oh, yes.

Mr. MOSHER. And this was the employers' side of the table, of which I was cochairman, and this is in the employers' record.

Senator DONNELL. I was going to ask you about that, and I am glad to know what that is. I should have known that, but I very hastily glanced through this and had not observed this. It reads as following, this particular excerpt:

To insure impartiality, the United States Conciliation Service—  
now, I am going to read the matter in italics here, and you can tell us whether that is in the actual minutes or whether you put that in here:

To assure impartiality, the United States Conciliation Service *should be*—  
"should" and "be" are italicized here.

Mr. MOSHER. I suppose the record shows the underscoring, and this is supposed to be an absolute part of that record.

Senator DONNELL. Thank you, sir.

As a part of the Department of Labor it does not assure impartiality.

The purpose of the Labor Department as stated by law is "to foster, promote and develop the welfare of the wage earners." The Service belongs no more in the Department of Labor than in the Department of Commerce.

Now, Mr. Mosher, does that represent your view, as well as that expressed here in the proposals of management at the employer delegates meeting?

Mr. MOSHER. It was the unanimous opinion of the delegates to the conference, and it is the sound feeling of the National Association of Manufacturers today.

Senator DONNELL. Yes. I do not have but a few minutes more time here, and I am not going into all the details of it now. I understand, though, your statement to be that you have set out here the record of what happened at President Truman's conference. Is that right?

Mr. MOSHER. Yes; it is here in detail with one exception, perhaps.

Senator DONNELL. I will ask you about that exception in a moment. Mr. Tobin's testimony on January 31, 1949, says this. He is referring to the President's Labor-Management Conference in November 1945, and he says:

\* \* \* be established as an effective and completely impartial agency within the Department of Labor.

Now, that is the same Labor-Management Conference of President Truman's friend here?

Mr. MOSHER. Yes.

Senator DONNELL. Then he says this about some other people here:

Mr. Ira Mosher, chairman of the executive committee, and Mr. Raymond Smethurst, general counsel of the National Association of Manufacturers, and Mr. Eric Johnston for the Committee for Economic Development, together with all the major labor organizations, testified in hearings held during the Eightieth Congress before this committee that no new agency should be created for handling conciliation functions outside the Department of Labor.

Do you want to make any comment on that or does this record that you set forth in here in your opinion answer that question?

Mr. MOSHER. I should point out an error on page 20, the fifth line from the bottom, where it says March 1947. It should be February.

Senator DONNELL. That should be changed on page 20, line 5, from the bottom, from March to February. Is that right?

Mr. MOSHER. Yes, sir. I cannot say as to Mr. Eric Johnston's position, but I can say very definitely as to Mr. Smethurst's position and my own, that at no time did we believe that the Conciliation Service should be part of the Department of Labor.

The Labor-Management Conference did finally agree in an attempt to avert a break between labor and management to allow that Conciliation Service to be in the Department of Labor providing certain safeguards were set around it.

Senator DONNELL. One of those safeguards is set forth on page 19:

Providing that management and labor advisers to the Conciliation Director would be appointed to help select (or determine rules for the selection of) Conciliation Service personnel.

That is right, is it not?

Mr. MOSHER. Yes.



Senator DONNELL. I see.

Mr. MOSHER. That conference, as a matter of fact, went further. I cannot prove this for the record, but it is my best recollection that labor and management together agreed on one occasion to keep this out of the Department of Labor, that is, the representatives of labor in this Committee No. 4, which was the official designation of the committee that had this particular job.

Senator DONNELL. Yes.

Mr. MOSHER. That committee itself agreed one day to keep it separate, but the next day labor changed its mind.

Senator DONNELL. Did you say something to the effect, Mr. Mosher, a few minutes ago, that maybe there was one item of the record left out here?

Mr. MOSHER. That is the statement I just made. It is my best recollection that labor representatives and management representatives in that Committee No. 4 on one occasion did agree to a separation, but the legal counsel of labor would not agree as they would not agree to anything else.

Senator DONNELL. Yes. Now, Mr. Mosher, regardless of past history, or future prophecy, your present opinion, I understand, is, and the opinion of your organization is, that it is desirable from the standpoint of the most effective use of mediation and conciliation that it be an independent agency rather than in the Department of Labor. Is that right?

Mr. MOSHER. That is my firm belief, and I think the record of the last several months will definitely prove it, that the Conciliation Service has increased in stature and has increased in effectiveness whereas prior to the passage of the Taft-Hartley Act there were not very many employers that ever used the Conciliation Service if they did not just have to.

Senator DONNELL. Yes. Now, Mr. Mosher, do you think that, generally speaking, among manufacturers over the country there would be more confidence in the fairness and the impartiality of an independent conciliation and mediation service than there would be in such a service if it were placed in the Department of Labor?

Mr. MOSHER. Well, I am afraid, Senator, I will have to go all out and say if it is put back in the Department of Labor there will not be any confidence in it.

Senator DONNELL. Now, I am going to push on rather rapidly. My attention has been called to the fact that the time is up. The seventh point is:

Encouragement of settlement of industrial disputes by voluntary and peaceful means is an objective of national labor policy.

The eighth is that—

collective bargaining should be engaged in and protected solely as a process between management and representatives of rank and file employees.

The ninth point is—

sound national labor policy as a matter of principle will afford adequate protection for the individual worker against violence, coercion, or intimidation, whether by the employer or the union.

Do you remember the incident of Mr. Carey of the Yale & Towne Manufacturing Co. being denied access to the plant of which he was president?

Mr. MOSHER. Yes, sir.

Senator DONNELL. And the tenth and final point that you make is:

As a matter of public policy, the collective-bargaining process should be restricted to matters which by their nature can be handled competently and effectively by negotiation.

Now those are your general principles and that is what you believe in. That is what you testified to. Is that right?

Mr. MOSHER. Yes, sir.

Senator DONNELL. That is all, Mr. Chairman.

Senator TAFT. That is all.

The CHAIRMAN. Senator Murray.

Senator MURRAY. Mr. Mosher, you think that the most important thing that could occur in this country would be the development of better understanding, better relations between management and labor?

Mr. MOSHER. Yes, sir.

Senator MURRAY. Is that the attitude of the NAM?

Mr. MOSHER. Yes, sir.

Senator MURRAY. When did they develop that attitude?

Mr. MOSHER. A growth of quite a few years. My own experience will take me back to the early 1940's. I became president of the NAM in January 1945, and I can assure you from that day on—I am not trying to indicate that it was not so up until that time, but I just want to emphasize that from that day—NAM stands four square on the principles that are here in this program.

Senator MURRAY. The NAM was organized, however, in 1895?

Mr. MOSHER. Yes, sir.

Senator MURRAY. And from its inception up until the period that you are mentioning, it maintained an extreme hostility toward organized labor?

Mr. MOSHER. Not during all of that period. In the early days—I would have to go to the record and find this, but in the early days—NAM was a foreign trade organization and its principal activities had to do with foreign trade and with maintaining trade offices all over the world, and those trade offices afterwards became the present Department of Commerce foreign offices. I think that is in the record.

It is true that in the early years of this century NAM members, in common with a lot of other people, did not like unions. On whether they were right or wrong I do not think you want me to make any comment. They did not like unions.

A lot of us did not like them. Some of our people still do not like them, for good and sufficient reasons, too, sir. We grow up, as a lot of other people, and on these principles, as I say, we stand four square for quite a good period of years. We accepted the laws as they came into being and did the best we could with them.

Senator MURRAY. That is, you accepted them since 1940?

Mr. MOSHER. We never did like the Wagner Act. We tried to operate under it. We did not find trouble with the Wagner Act itself, sir, so far as the provisions of it are concerned, if the thing had been administered fairly. It never was administered fairly from the day it was passed.

Now, I do not want to leave the impression that we like the Wagner Act. All I am saying is that the act, if it had been administered on a fair and square basis to all the public, employers and employees together, that we would not have had the trouble.

Senator MURRAY. You say that some of your members and the organization still has some hostility towards the idea of organized labor?

Mr. MOSHER. No. The organization, representing the majority of our members by far, has no hostility to organized labor. Certain individual members—

Senator MURRAY. Many of the more powerful individual members still maintain that attitude toward organized labor.

Mr. MOSHER. No, I cannot go along with you on that, sir, because I have to interpret what you mean by "more powerful members."

There are not any more powerful members in NAM than any other organization. I have got just as much to say about NAM, and I represent, my basic organization has 291 people on the pay roll. It did last Saturday at the directors' meeting. I have just as much to say, as one of the 150 directors, as has anybody else.

Senator MURRAY. How many organizations, how many corporations are represented in your organization?

Mr. MOSHER. About 15,000.

Senator MURRAY. About 15,000, so it would not be fair for me to ask you to file a list of the organizations that practically comprise all of the important corporations of the Nation.

Mr. MOSHER. Well, we represent, we think, somewhere between 80 and 90 percent of the manufacturing employees of the country. We restrict our membership to manufacturers.

Senator MURRAY. However, in the early period of your organization, you concede that your organization and the major corporations of the country were extremely hostile to organized labor. Do you think now that that was a mistake, that was an unfortunate period in the history of labor relations in this country?

Mr. MOSHER. Well, I do not want to correct your statement. I just want my statement to read that NAM as an organization was not fond of organized labor in the early days. I am not speaking for the big corporations that you added into your question. They will have to answer for themselves. I think, in answer to your question, that we made a lot of mistakes.

Senator DONNELL. You made what?

Mr. MOSHER. A lot of mistakes in those days.

Senator MURRAY. When was the Wagner Labor Relations Act put into effect?

Mr. MOSHER. 1935.

Senator MURRAY. 1935; so it had a very short period in operation there before you had changed your opinion. Did you not think during that period that the Wagner Labor Relations Act was developing satisfactorily, that the operations of the act were becoming recognized as beneficial and that they were improving conditions in the field of labor-management?

Mr. MOSHER. No; we never thought that from the very beginning, as the law was administered. We thought quite to the contrary.

Senator MURRAY. In what way did you think it was not?

Mr. MOSHER. The Wagner Act was administered as a 100 percent one-sided act.

Senator MURRAY. Yes.

Mr. MOSHER. The unions could do no wrong and an employer could do no right, and that is the history of the Wagner Act as it was administered.

I tried to point out a few minutes ago that I do not think that need to have been. I think the Wagner Act, bad as it is in its language, could have been administered on somewhere near an equal basis. It never was administered that way.

Senator MURRAY. It was a pretty difficult thing to put an act of that kind into effect and have immediate cooperation on both sides, was it not, because the corporations had, over a long period of years, maintained this extreme attitude toward the unions, and had developed sort of an army to take charge of the troubles and problems that they would have with labor?

Mr. MOSHER. Well, we would have to sort the years out, I think, Senator. I think the conditions as they existed in the 1910's prior to the First World War were quite different from what they were in the 1920's, and again they were different from what they were in the 1930's.

Now the Wagner Act came into being in 1935. It was approved by the Supreme Court in 1937, and was the law of the land up until the passage of the Taft-Hartley Act.

Yes, it is true that unions got their ascendancy under the administration of the Wagner Act.

Senator MURRAY. If it had not been for the Wagner Labor Relations Act, we would not have had organized labor as we have it in this country today.

Mr. MOSHER. I suppose not.

Senator MURRAY. Do you not think that was a very beneficial thing to our country and to our economy?

Mr. MOSHER. Well, now, again, sir, we have got to draw some lines in between there. I am firmly of the belief that there is a place for unions in our economy. I have no objection to unions as such.

I object to the way certain unions are run and I object to the certain things unions do, and when I speak of unions, I am not saying that there are not a great many unions that are perfect in every respect. I have got some. I know that.

I have had plenty of dealings with unions and I have never yet had a strike, sir, in my entire history as a manufacturer, so I can very proudly boast of that, and that is with union labor and with unorganized labor.

Senator MURRAY. But the general run of corporations during that period back there maintained a system of extreme hostility. Did they not set up sort of organizations within their companies with gunmen and detectives?

Mr. MOSHER. I know what you mean, Senator. You and I have discussed this before at several hearings.

Yes; there were certain employers that did everything everyone could speak of. I would only quarrel with the use of the word "general" because I do not think that was true generally of employers.

Senator MURRAY. I do not know of any of the large corporations in that period—of course, I lived out in Montana and I have not had the experience and knowledge of how they operated back in some of the big industrial centers, but I know in my State of Montana gunmen and detectives were imported from all over the country, and whenever there would be any dispute about labor, why they would go to work.



In fact, they used to join the unions and write the bylaws and constitutions of the unions out there sometimes, and make them so extreme that they would not be workable. We have had cases out there where detectives have done that. It has been proven in court.

The hostility that was maintained toward organized labor in that period developed, in this country, extreme feelings on both sides, and it was a very difficult thing to expect that the Wagner Act would immediately end that era and immediately create very satisfactory conditions. It would take time, would it not, to make the Wagner Act work?

Mr. MOSHER. Well, we had 12 years of it.

Senator MURRAY. Well, what were those 12 years?

Mr. MOSHER. 1935 to 1947.

Senator MURRAY. Well, did you not get the American Bar Association to say that it was unconstitutional and no one had to pay any attention to it?

Mr. MOSHER. That was the expressed legal opinion in those years.

Senator MURRAY. Yes. That was the thought and hope of everybody connected with the National Association of Manufacturers at that time.

Mr. MOSHER. You see, the basic thing with the Wagner Act was that instead of promoting collective bargaining it ruined collective bargaining. There was no collective bargaining as it finally came into real being.

Senator MURRAY. The Wagner Labor Relations Act?

Mr. MOSHER. Yes; there was no collective bargaining. It was all one-sided.

Senator MURRAY. Well, that is a question on which I cannot agree with you. It was one-sided because management would not cooperate, and would not make an honest and sincere effort to bring about collective bargaining. Whenever they did do that it resulted in good relations.

I remember the steel company. As I recall, Mr. Myron Taylor, after they had finally negotiated their contract there and it had been in operation for a little while, said:

Never before in the history of this company have we had such satisfactory relations with labor as we have since we entered into contracts with labor organizations.

Mr. MOSHER. Well, I would hate to discuss that particular steel situation with you. There are a lot of things to be said about it on both sides.

I still would like the record to show that in my own opinion and in the opinion of those people I represent, the Wagner Act did not promote, generally speaking, collective bargaining.

Senator MURRAY. Well, back in the hearings which we had in the Eightieth Congress when we were studying these problems, did you not testify at that time to the following effect:

During the past year the Conciliation Service has made important strides in the direction of providing that kind of conciliation, strong, impartial, and competent. I would like to see that kind of service extended and strengthened.

That was in the Labor and Public Welfare Committee hearings in the Eightieth Congress, first session, page 927 to 955.

Mr. MOSHER. If that is what the record says, I certainly did subscribe to it. I would like to see what the record shows as to what

led up to it and what the circumstances were around it. What page is it on?

Senator MURRAY. Page 927 to 955.

Senator DONNELL. Would the Senator be kind enough to read that statement again? Is this testimony of someone?

Senator MURRAY. Mr. Mosher's testimony.

Mr. MOSHER. And the page number, sir?

Senator MURRAY. 927 to 955 is what I have here.

Senator DONNELL. Would the Senator just be kind enough to read that again? I did not follow it.

Senator MURRAY (reading):

During the past year the Conciliation Service has made important strides in the direction of providing that kind of conciliation (strong, impartial, and competent). I would like to see that kind of service—

and then there are some omissions—

extended and strengthened.

This is from the hearings before the Committee on Labor and Public Welfare, Eightieth Congress, first session, 927 to 955.

Mr. MOSHER. Can you tell me what page that is on?

Senator DONNELL. It is not on that page.

Senator MURRAY. I cannot. You may take your time and read that over and make comment on it afterwards and not take up the time now.

Senator DONNELL. Thank you, sir. It is not on page 927, is it, Senator? I do not find it here.

Senator MURRAY. Well, it is somewhere between pages 927 to 955.

Senator DONNELL. I did not doubt the correctness of the Senator's statement, but I did not find it on that page.

Senator MURRAY. In the same hearings—

Mr. MOSHER. Senator Murray, I have the story now.

Senator DONNELL. What page is it on, Mr. Mosher, that statement? Did you find it?

Mr. MOSHER. It is in the brief. I have a copy of the original brief as submitted. I can find it in this. Page 954 of the Committee on Labor and Public Welfare, Senate, February 1947, under "Conciliation."

Senator DONNELL. How does the particular sentence that you are looking at read?

Mr. MOSHER (reading):

During the past year the Conciliation Service has made important strides in the direction of providing that kind of conciliation.

Senator DONNELL. Page 954?

Mr. Mosher (reading):

Members of the Labor-Management Advisory Committee to the Conciliation Service have performed a useful and valuable function in achieving a better understanding between the Conciliation Service and labor and management. I would like to see that kind of service and cooperative relations extended and strengthened.

The labor-management conference in November 1945 recommended to the Secretary of Labor that he appoint two committees. One was an advisory committee. The original intent of that committee was that it would screen the conciliators, it would be half labor and half management.

That particular idea was abandoned as the attorneys pointed out to us that it was not within the law, that the Secretary of Labor could not delegate that responsibility to anybody else.

Nevertheless, he immediately appointed an advisory committee which did function and did a very good job, so I am told. I was not on the committee, but the reports indicate that a very good job was performed.

There was a second committee appointed which was named a technical committee, which was intended to be used to give advice on wage compensation matters, incentive systems and things of that sort, with the idea, of course, of promoting the general welfare of the country as a whole.

During that period, I think it was within a couple of days after that conference closed in November of 1945 that Secretary Schwollenbach appointed the committees and started to function right away and did function. I do not know how long it functioned. I think it functioned during the whole of Secretary Schwollenbach's term. It is not functioning now.

The technical committee never did function, but the first committee did, and did a good job.

Senator MURRAY. During those same hearings that we have reference to there, is it not true that in the course of the hearings Mr. Raymond S. Smethurst, counsel to the National Association of Manufacturers, also appeared and testified as follows with regard to the Conciliation Service. I quote:

Much has been said of the need for strengthening the United States Conciliation Service with a view to making it a more effective agency to assist in the peaceful settlement of labor disputes. With this general objective we are in complete agreement.

We have, however, some misgiving regarding the method proposed for achieving this objective. These proposals all tend toward more governmental machinery. They would establish a new Mediation Board or Commission to be independent of the Department of Labor. This means another Government agency charged with responsibility for settling labor disputes.

Then there is an omission, and then it proceeds:

We seriously question the advisability of establishing any new Federal agency having responsibility for the settlement of labor disputes.

That was in the same hearing at that time. Do you recall that?

Mr. MOSIER. No, I do not, sir. If I am in order, Mr. Smethurst sits right behind me. May I ask him to answer?

Senator MURRAY. Yes.

Mr. SMETHURST. Mr. Chairman, there is a telegram in the record, or at least addressed to the chairman.

Senator MURRAY. I beg your pardon?

Mr. SMETHURST. I say I have sent a telegram to the chairman following Secretary Tobin's testimony in which I have set the record straight. I do not think that is an accurate impression or implication to draw from the testimony of 1947.

Senator MURRAY. I am quoting language that you are purported to have given at that hearing.

Mr. SMETHURST. That testimony was addressed to S. 55 which proposed the creation of Federal Mediation Boards modeled after the Railroad Adjustment Board, the Railroad Mediation Board.

Senator MURRAY. Settling up a separate agency to handle conciliation and mediation?

MR. SMETHURST. Neither the bill nor the hearings nor the discussion had any relation whatever to the question of an independent impartial conciliation service, and that is the point of the telegram which I sent 2 weeks ago to Senator Thomas.

Senator DONNELL. May I ask that that telegram be incorporated in full in the record, Mr. Chairman.

Senator MURRAY. It may be.

(The telegram referred to above is as follows:)

FEBRUARY 3, 1949.

HON. ELBERT D. THOMAS,

*Chairman, Senate Committee on Labor and Public Welfare,  
Senate Office Building, Washington, D. C.:*

In the statement submitted to your committee on January 31 by the Honorable Maurice J. Tobin, the Secretary advocated inclusion of the Federal Conciliation Service under jurisdiction and authority of his Department. His statement, page 5, stated that I, as general counsel of the National Association of Manufacturers, testified in hearings held during the Eightieth Congress, "That no new agency should be created for handling conciliation functions." He implied my testimony then opposed removal of the conciliation service from the Department of Labor.

A bare reading of my testimony 2 years ago before the Senate committee, page 1819, part 4, committee hearings, will demonstrate that the Secretary's reference was misleading and inaccurate. My testimony then was directed to S. 55, which provided for the creation of an independent mediation board of five members. I believed such a board would tend to become a "court of last resort" fixing standards for all industry and undermining collective bargaining. The question of an independent conciliation service was not then involved. Had the issue been raised then, I would have favored a service independent of the Labor Department as a prerequisite to impartiality. Recent developments make such independence even more necessary today. I would appreciate inclusion of this telegram in the record of your hearings to correct erroneous statement of the Secretary of Labor.

RAYMOND S. SMETHURST,

*Counsel, National Association of Manufacturers.*

Senator DONNELL. Have you completed your statement, Mr. Smethurst?

MR. SMETHURST. Yes, sir.

MR. MOSHER. Senator Murray, if I may add, the record will show in those hearings. I do not know about that particular one, but in hearings before your committee back in 1947, I personally opposed the creation of an independent mediation board here in Washington as I opposed any formally organized board.

I still do not believe that any formal organized board can handle conciliation and mediation effectively, certainly not a Washington board.

Senator MURRAY. Well, you do concede, Mr. Mosher, though, that the Government policy of permitting labor to organize and to bargain collectively is a sound policy?

MR. MOSHER. Yes.

Senator MURRAY. And that it has had a very beneficial effect upon our economy?

MR. MOSHER. I subscribe to the first part of your statement 100 percent. I think it has had sound effects on the economy.

I do not like the implication that it has of itself created certain situations that are entirely sound because I do not think that.

Senator MURRAY. Well, do you not think that that policy has resulted in greatly increasing production and consumption in this country? Has it not had the effect of benefiting the corporations of the



country by reason of the increased purchasing power that has been brought about through organized labor being able to bargain collectively and get better wages and better living conditions? Do you not think that has had a tremendously beneficial effect on our economy?

Mr. MOSHER. I am afraid we have got to go into the subject a little deeper and a little wider and go into the general economics of the picture.

You say "created purchasing power." There is no way we can create effective purchasing power in this country except through productivity. We do not create it by paying higher wages.

Senator MURRAY. Do you not produce productivity, though, by having satisfactory labor relations, good wages, and working conditions? Is that not one of the ways to accomplish that?

Mr. MOSHER. Of course it is, sir; but on the other hand we have got such an extreme amount of featherbedding through many of the unionized industries that the public is paying an awful price for it, and those industries themselves are going to pay a horrible price for it.

Senator MURRAY. No one is in favor of featherbedding that I know of. I think that the unions are anxious to correct evil conditions of that kind where they are shown to be real featherbedding.

Mr. MOSHER. Would you say the record shows that?

Senator MURRAY. Sometimes they charge things up to featherbedding that are not really featherbedding.

Mr. MOSHER. It is a blanket, but I would suggest the record will not back up the statement that the unions correct featherbedding when it is called to their attention.

Senator HUMPHREY. Senator Murray, would you yield for a question.

Senator MURRAY. I yield.

Senator HUMPHREY. Would you conclude, I wonder, under the concept of featherbedding the exorbitant use of corporation or business funds for purposes of advertising, business trips, items which we might call public relations?

After all, such an expense is added to the price of the product, is it not? Let us take, for example, during the war when there were no refrigerators available; yet companies kept advertising their products. Do you think that was a type of economic featherbedding?

Mr. MOSHER. No, I do not.

Senator HUMPHREY. You do not.

Mr. MOSHER. I think any company during the war—I did it with my own company—which wanted to stay in business and be recognized by the buying public after the war, had to and should have advertised. It is a good policy and good expenditure from a public standpoint to keep the name in front of the public.

Now, in retrospect we can say this: Had we thought the war was going to last 5 years, we might have done it on a little different basis, but that is retrospective thinking.

Senator HUMPHREY. Had you thought it was even going to start?

Mr. MOSHER. I do not get the implication of that.

Senator HUMPHREY. I mean the fact of the attitude of American industry prior to the days of the war as to whether or not we were even going to have to do anything about the war.

Mr. MOSHER. Well, I still do not understand your question.

Senator HUMPHREY. What was your position prior to 1940?

Senator DONNELL. I am unable, Mr. Chairman, to understand the Senator's question.

Senator HUMPHREY. The question is quite simple. How did they feel? Did they feel that there was going to be trouble that we would be involved in, or did they not feel that there would be trouble that we would be involved in? It is a simple question.

Senator DONNELL. That was not the question you asked.

Senator HUMPHREY. May I say I put it in legal language.

Mr. MOSHER. I do not know what you mean. You ask me whether I thought we were going to have a war or not?

Senator HUMPHREY. I simply asked whether or not prior to the war you were of the mind that you should be making preparations for the war?

Mr. MOSHER. We did.

Senator HUMPHREY. Did you?

Mr. MOSHER. We did.

Senator HUMPHREY. All right, that is all I asked you.

Mr. MOSHER. My own company went a long, long way, long before the United States went into the war.

Senator HUMPHREY. I only asked a question. I am not asking for an argument. I am just asking the question.

Senator DONNELL. Would the Senator be kind enough to permit this interruption?

Senator Humphrey was questioning, as I understood him, Mr. Mosher, as to the legitimacy of the expenditure for the type of advertising he speaks of during the war, and then he suddenly reverted to a question as to whether the witness thought we were going to get into the war before the war.

Senator HUMPHREY. Do not be so impatient.

Senator DONNELL. I am not impatient. I just wanted to state my understanding of the Senator's questioning.

Senator HUMPHREY. I would like to ask this question in reference to that: Prior to the war when there were all kinds of Government contracts being let during the national defense period—I am talking about featherbedding now; I am somewhat familiar with the practices of industry on this—did you have a large number of so-called expeditors running around the country? Did industry have a large number of expeditors running around the country with rather lush expense accounts that were added on to the cost of the commodities?

Mr. MOSHER. I think the expeditors—

Senator HUMPHREY. They did not expedite.

Mr. MOSHER. Let me answer your question. I cannot subscribe to the statement that the expeditors, of which there were many, were on lush expense accounts. They did not have any lush expense accounts in my company, and I can assure you of that, and many of those expeditors were there because the War and Navy Departments demanded that that type of activity be carried on.

Senator HUMPHREY. Like the cocktail parties that were thrown and the big fancy dinners that all the public officials attended. Was that all necessary in order to carry on the war effort?

I am talking about featherbedding, and believe me this town was loaded with them and so were the rest of the cities in the country.

There were all kinds of big fancy parties put on. Was that necessary for production?

Mr. MOSHER. I am afraid we will have to go back to your question. You asked me about expeditors. I do not believe any expedited the delivery of merchandise here in Washington to any extent because I do not think there is much merchandise produced in Washington. Certainly none of my expeditors in Washington spent much time in Washington—

Senator HUMPHREY. I am not asking you, Mr. Mosher.

Mr. MOSHER. I speak for NAM on that basis.

Senator HUMPHREY. All of the big industries. You have about 85 percent of the manufacturing firms?

Mr. MOSHER. Yes, sir.

Senator HUMPHREY. Your answer to Senator Murray was that you are opposed to featherbedding. In other words, you are opposed to free rides.

Mr. MOSHER. I am.

Senator HUMPHREY. I am, too. I am merely asking a question as to whether or not you think there was any type of economic featherbedding, free rides, waste, extravagance, luxury that was utilized by American industry which has not been exposed too much.

Mr. MOSHER. I think there was plenty of extravagance, plenty of luxury all the way along the line, but it was not in expediting.

Senator HUMPHREY. What you call public relations. I think there is a little extra public relations even down in Washington. I have not been so sure that every department head ought to have four or five staff writers, for example. I think they are a little public relations crazy.

Mr. MOSHER. It is on both sides.

Senator HUMPHREY. I am perfectly willing to admit that, but American industry is efficient, and when we had the cost-plus contracts—I am just making some observations; I spent some time with the War Manpower Commission and had some idea of what was going on in some of the relatively large plants that were producing critical war materials.

It always seemed to me that there were quite a few people that really never got around to producing anything except to produce a nice party at the club or produce a nice dinner or produce a nice cocktail party when the Admiral came through, and if I am not mistaken that was all added onto the cost of the commodity. Is that any worse than having some employee who does not do a darn thing on the job?

Mr. MOSHER. May I ask a question to try to arrive at some common ground?

Senator HUMPHREY. Yes.

Mr. MOSHER. In the first place I did not know we had cost-plus contracts during the war.

Senator HUMPHREY. Did you not?

Mr. MOSHER. No, not according to the terminology of the Government and the execution of those contracts by the Government.

Next we have a definite ruling in our cost calculations that we could not charge any Washington office expenses to a cost-plus percentage contract. We had fixed-fee contracts. We could not charge any part.

I had 14 men here in Washington in one office and the Government undertook to tell me that I could not charge any of that expense to a Government contract which was cost-plus-fixed-fee.

Senator HUMPHREY. But if you had them maintained for part of their time back in your home office, you could charge it. You bet you could.

Mr. MOSHER. If they were working on Government contracts?

Senator HUMPHREY. You bet you could.

Mr. MOSHER. If they were working on Government contracts.

Senator HUMPHREY. That is right. In other words, if they were based part-time back at your home plant, you could charge it to a part of your production, and they always made sufficient trips to be back home part of the time.

Mr. MOSHER. No; they were here permanently.

Senator HUMPHREY. In some instances.

Mr. MOSHER. At Government insistence.

Senator HUMPHREY. When we talk about featherbedding, we ought to be frank about it. There were millions of dollars spent in advertising at a period of time when there was nothing to advertise.

I hear great radio programs that come on and advertise and advertise and advertise and advertise about their wonders at a time when it is even a monopoly. Is that not all added into the cost? Is that not a kind of featherbedding?

Do not misunderstand me. In a competitive type of industry you have got to advertise.

Mr. MOSHER. You leave me in a quandary. I do not agree with any of your implications.

Senator HUMPHREY. I did not expect you to.

Mr. MOSHER. If you want to go into the discussion of advertising, while I am not an advertising expert by any manner of means, I feel quite capable of supporting industry's side of the argument. It is advertising and selling that has made the United States economy and nothing less but that, over a great many decades. It is the creation of the desire to own something that causes you and me to work to get it, and that is where you get your productivity.

Senator HUMPHREY. Would you call featherbedding, economic featherbedding, a large number of people serving on a board of directors that seldom turn up for a meeting, that are given lush salaries?

Mr. MOSHER. I do not know of any board of directors, that seldom turn up to a meeting, that get lush salaries. I get \$25 to go to a meeting. I go to four a year. It takes me 2 days to go there and back. That is pretty typical now.

I think I know quite a few boards of directors, and I do not know of any board of directors where they pay lush salaries for no services performed.

Senator HUMPHREY. Well, that is a matter of interpretation as to what you mean by "services performed." Let us not get involved in that one because I mean service performed can be, for example, just a matter of good will. That has been included in services performed.

Services performed can be advice and counsel, and a man's advice and counsel can be very expensive. For example, I just recently read of a transit case down in the city of Chicago where a man felt that his services performed were worth several thousand dollars an hour. It



was services performed. I do not know what kind of services he was giving.

Mr. MOSHER. That is one case in the public utilities, was it not?

Senator HUMPHREY. Yes.

Mr. MOSHER. Connected with the Government. It was not a manufacturing company.

Senator HUMPHREY. No; it was not in connection with the Government at all. It was in connection with private utilities.

Senator MURRAY. Mr. Moffett just got \$150,000 for a little advice, I see in the press.

Mr. MOSHER. The court ordered that.

Senator HUMPHREY. All I am asking is whether or not you do not include that in the matter of featherbedding.

Mr. MOSHER. No, I think we are covering altogether too much territory. That is not generally called featherbedding. To this extent you are right in the contention that if money is thrown away, it is a wasteful extravagance. Of course it is.

Senator HUMPHREY. It is charged to the commodity.

Senator MURRAY. I would like to ask one or two more questions and I will turn the witness back to you in a moment, Senator.

You do not charge up to labor all of the responsibility for not having good, peaceful, satisfactory relations between management and labor in this country?

Mr. MOSHER. Oh, no, no, of course not.

Senator MURRAY. You think the early history of the struggle between management and labor has had a great deal to do with the development of the present situation in the country?

Mr. MOSHER. Yes, sir.

Senator MURRAY. The mistaken attitude of management in the early history has created a deep resentment in the minds of laboring people that does not leave them quickly.

Mr. MOSHER. It did create that, but that is a decade, a score of years ago. That is another generation.

Senator MURRAY. Yes; that is true, but they have a very distinct recollection of it. I have.

Mr. MOSHER. I do not think they have a recollection half as good as they have of the propaganda set-up.

Senator MURRAY. I do not know. I did not have to read propaganda to learn what I have learned in this country. I saw it with my own eyes. I saw them bring the military into the back yard of my home in Montana and I saw them dump guns out on the streets in the struggles they had out there.

Mr. MOSHER. Senator, I have seen the State police come around one of my plants when we had some labor difficulty.

I made the statement that there never had been a strike in my industrial experience. I made an error when I made that statement. When the IWW attacked us in Michigan in 1919, there was no police force except the State police to prevent our plant from being totally destroyed.

Senator MURRAY. That was a part of the general warfare that had been created.

Mr. MOSHER. There was no warfare. In that case, sir, the employees were not asking for any change in hours, rates of pay, working conditions, or anything else. The IWW wanted union recognition, and we

would not give it to them, and we would not give it to the IWW today if the Wagner Act did not force us to do so.

Senator MURRAY. Yes, but it seems to me that with the adoption of the Wagner Act if management had gone along and given that a fair trial and had indicated a desire to try to make it operate, we would have avoided a lot of the troubles that we have in this country today.

Mr. MOSHER. We have to bear this in mind——

Senator MURRAY. At that time you would not recognize the right of labor to organize at all. You claimed that you would only deal with them individually and as you saw fit.

Mr. MOSHER. It is true there are a great many employers that felt that way. Now, then, you asked me did I not think that had management—employers—given the Wagner Act cooperation, that the situation would have been different.

Management had no chance to give the Wagner Act any cooperation. They never even got a look-in. Every single decision—I am talking generally; there are exceptions, of course—was so one-sided that you could not maintain your self-respect and operate under it.

Senator MURRAY. Well, they were dealing with management that was extremely hostile, and I suppose in the early period of the act they may have had to be very strict and stringent in their actions under the act in order to force management into line.

It would seem to me if they had from the very commencement, instead of having the American Bar Association issue an announcement that the law was unconstitutional and did not have to be recognized at all—you created a very bad situation and that tended to bring on the troubles that went on until the war came on.

Mr. MOSHER. Well, it is inconceivable, is it not, that an employer under the Wagner Act decisions could have disagreed with the opinion of attorneys that the act was unconstitutional under the very way it was not only worded but handled?

It is perfectly inconceivable to me that a union man could call me all the names he wanted to call me and I could not answer him back.

Senator MURRAY. Before the act went into operation at all you repudiated it and refused to abide by it and called it unconstitutional, and you never gave them an opportunity to try to put it into effect.

Mr. MOSHER. I am not a lawyer and I have no right to make this statement, but if laws are fair and equitable and just—the law was not fair nor equitable nor just.

Senator MURRAY. What was there unfair and inequitable and unjust about the Wagner Act?

Mr. MOSHER. It was all one-sided.

Senator MURRAY. How was it one-sided? What did it do that was one-sided? In what respect was it one-sided? It gave labor the right to organize and the right to choose their own representatives.

Mr. MOSHER. Yes, sir.

Senator MURRAY. And to bargain collectively, and it required management to bargain with them, and if they did not bargain with them it was considered to be an unfair labor practice. What is wrong with that?

Mr. MOSHER. That is all right as far as it goes.

Senator MURRAY. In what respect did it fail to go far enough to make it a proper act?

Mr. MOSHER. No, 1, there was no obligation on the part of the union to bargain or to adhere to an agreement.

Senator MURRAY. The labor unions for all the years prior to that had been struggling and coaxing and begging the management to bargain with them. They refused.

Now why would you have to put it in the act at the time it was enacted that they should have to bargain collectively when they had spent their whole lives prior to that time trying to beg management to bargain with them? I do not think that was necessary. It might have developed later. The situation was not in existence at the time the act was created.

Mr. MOSHER. You are saying, are you not, Senator, that "Because I have not agreed with you on something over a period of years, that it is all right to pass a law that forces me to do something but you do not have to do anything."

Senator MURRAY. Well, I do not think that that entered into the minds of the people at the time the act was being created. I do not think they thought that that was essential because it was management that was refusing to bargain.

Mr. MOSHER. Well, suppose it was. Supposing management did refuse to bargain. I refuse to agree with you on a contract. Is there any reason why you can get a law through that makes me do something and you are not bound by it?

You ask me what the Wagner Act did not do. I have got a page of notes here, about 11 or 12 pages long, which I would be glad to give you which shows what it did not do.

Senator DONNELL. Mr. Chairman, the Senator has asked Mr. Mosher a question and I respectfully request that Mr. Mosher be permitted either to answer it orally now or to file whatever he desires in answer to that question.

Senator MURRAY. You can have him file anything you wish.

Senator DONNELL. I would like, Mr. Mosher, if you would, to file your answer to that question.

Mr. MOSHER. I would be very glad to.

Senator DONNELL. I ask that it be incorporated in the record, Mr. Chairman. Is the order so made that it shall be filed and printed in the record?

Senator MURRAY. Yes. Now I will not take up any more time with the examination of this witness. The point I wish to make is that I agree with him fully to the effect, in his statement, that the greatest good that could come to this country would be the development of satisfactory relations between labor and management, and I do not think you are going to accomplish that in the spirit that has been manifested under the Taft-Hartley Act.

The Taft-Hartley Act, I think, was undoubtedly developed and designed to weaken labor and to get control of the situation.

In all the advertisements that went out and the speeches and statements that were issued in the country prior to its enactment, it was charged that labor had become a monopoly and it had to be broken

down. The very purpose of the act, it seemed to me, was to weaken labor, and it creates this very dissension which will continue to exist as long as this struggle goes on.

It seems to me that you have got to be a little bit more conciliatory and be a little bit more anxious to give a fair break to the men in your dealings?

Mr. MOSHER. May I make a couple of comments?

Senator MURRAY. Yes.

Senator DONNELL. Mr. Mosher, before you make them, might I ask that the chairman indicate his ruling so that the stenographer gets it as to the fact the statement made by Mr. Mosher will be incorporated in the record at this point?

The CHAIRMAN. Yes: it will be so ordered.

(Mr. Mosher subsequently submitted a supplemental statement covering this point and also answering subsequent questions, which appears hereafter to follow his oral testimony.)

Mr. MOSHER. I would just like to make a couple of brief comments, if I may.

The Taft-Hartley Act was passed as a result of public opinion. Public opinion demanded something be done to correct abuses that had grown up and which were accumulating into a pretty long and pretty bad record. The Taft-Hartley Act was not passed for any reason except that public opinion demanded that they be curbed.

You remember yourself, sir, how far public opinion went. It almost got us into permanent arbitration, compulsory arbitration.

Senator MURRAY. I disagree with you completely when you say it was the result of public opinion. It was the result of propaganda that was developed in this country, because in the last election on November 2 the people of this country voted on this subject and in every instance where that was an issue the Taft-Hartley Act was repudiated.

Senator DONNELL. I would like to challenge that statement for the record.

Mr. MOSHER. Thank you, Senator. I will not have to, then.

I would like to make one more comment, if I may. Taking the position as you just set it forth, I want to take you back to the labor-management conference in the fall of 1945. Into that conference went management with the firm desire, publicly expressed—I expressed it for them as their representative, and so did Mr. Eric Johnston—we were willing to go to almost any length to come to a reasonable agreement.

Now the record positively shows that with one or two relatively unimportant exceptions, labor would agree to absolutely nothing.

Now I want to point out one thing further, in case you are not aware of the situation, that in these eight committees that we had—and again there were one or two exceptions: any statement I make I can find exceptions to—every one of those committees almost came to agreement between the international heads of the various unions and representatives of management, and we must bear in mind that those management representatives were picked by the President. They were reasonable representatives, but they carried no authority to bind management to anything.

In every one of those committees the operating heads of the unions came to a substantial agreement with representatives of manage-



ment, only to have every one of those pacts destroyed within 24 hours. As soon as they were made they were destroyed.

I only pose the question, Why? I cannot answer it except by guessing. I am just pointing out to you a very definite situation which was at the root of this trouble.

Now if I may, I am going to try to answer part of your question. Certain individuals did not want labor peace, and they do not want it today except on their own terms, and I do not like to do business on that basis.

I am friendly with all these union fellows. I do not have any trouble with them individually, and I think they will all tell you that.

Senator MURRAY. Now I wish to conclude my examination, and in conclusion I want to have inserted in the record here a statement showing the facts with reference to the National Association of Manufacturers as brought out in hearings before the La Follette committee. This is "General Conclusions" of the La Follette committee regarding the organization and activities of the National Association of Manufacturers, Report No. 6, pages 220 to 222.

Senator DONNELL. Mr. Chairman, may I ask Mr. Mosher if he would be willing to examine the insert that the Senator has just asked be placed in the record and present such answer, if any, as he desires to present thereto.

Mr. MOSHER. I would like that opportunity because the Senator has put that same thing into the record in every hearing I have testified, for no purpose except to smear me.

Senator MURRAY. I never put it in before, Mr. Mosher.

Mr. MOSHER. I question the fact, sir. You told the story and I will rest on the record.

Senator MURRAY. I will rest on the record because I do not recall ever having cross-examined you on the La Follette Committee report before.

Mr. MOSHER. Sir, I do, and I will find the record for you.

Senator DONNELL. Mr. Mosher, you will furnish for the record in this proceeding such answer, if any, as you desire to make to the La Follette item that has been mentioned?

Mr. MOSHER. Yes, sir.

Senator DONNELL. Mr. Chairman, I ask that the answer to be prepared by Mr. Mosher shall be incorporated at this point. (It was subsequently submitted by the witness at a point farther advanced in the hearing and appears hereafter. (See supplemental statement.))

The CHAIRMAN. It is so ordered.

(The document referred to by Senator Murray is as follows:)

#### NATIONAL ASSOCIATION OF MANUFACTURERS

The following are the "General Conclusions" of the La Follette Committee regarding the organization and activities of the National Association of Manufacturers (Rept. No. 6, pt. 6, pp. 220-222).

"1. The National Association of Manufacturers is largely financed by a small group of powerful corporations, representing in 1937 less than 10 percent of its membership of 3,000 companies. A much smaller clique of large corporations, not more than 60 in number, have supplied it with active leadership. Through the National Association of Manufacturers, and its affiliated national network of employer associations in the National Industrial Council, this small group of powerful interests have organized the strategy for a national program of employer opposition to labor unions and to governmental action to improve conditions of labor. Operating on a budget, which in 1937 reached \$1,440,000, the

National Association of Manufacturers through its talented publicity staff, its skilled attorneys, and its legislative representatives has actively sought to speak as the "Voice of American Industry," representative of all American manufacturers.

"2. Prominent members of this inner clique of corporations in the National Association of Manufacturers have denied their own employees the right to organize for the purpose of collective bargaining. The committee's studies for the period 1933-37 show that many of these corporations made extensive use of labor spies and purchased hundreds of thousands of dollars worth of tear gas and sickening gas to crush the labor organizations formed by workers in their plants.

"3. The National Association of Manufacturers lent itself to the purposes of these corporations after 1933 since traditionally it had led the opposition of antiunion employers against the right of labor to organize for the purpose of collective bargaining and against social legislation. Its paid staff had experience, in one case extending back to 1903, in the techniques of antiunion propaganda and in blocking social legislation. (Editorial note.—The NAM opposed the Railway Labor Act of 1926, despite the joint support of the measure by railway labor and management.)

"4. Accordingly, under the guidance of these dominant corporations, the National Association of Manufacturers, since 1933, has consistently fought the national labor policy enunciated by the Congress in section 7 (a) of the National Industrial Recovery Act, in Public Resolution 44 (73d Cong., 2d sess.), and in the National Labor Relations Act, impairing the successful operation of the law, deliberately organized and coordinated the efforts of employers and employers' associations in a planned Nation-wide campaign to nullify the administration of the National Labor Relations Act, impairing the successful operation of the law.

"5. With the funds of this group of powerful corporations, the National Association of Manufacturers has flooded the country with biased propaganda directed against organizations of American workmen and against social legislation adopted by Congress. This propaganda, for the most part unidentified by the public as coming from the National Association of Manufacturers, is reiterated day after day through the means of every channel of public expression—in the press, over the radio, in schools, on billboards, by public speakers, by direct mail, and in pay envelopes. In some cases the National Association of Manufacturers has contrived to arrange for the sponsorship of its propaganda by others, for the purpose of misleading the public into believing that it came from an independent source. Much of this propaganda is intended to influence the public with reference to elections, and officials of the associations have boasted that its propaganda has influenced the political opinions of millions of citizens, and affected their choice of candidates for Federal offices.

"6. The majority of American businessmen today have conformed to the national labor policy and have not interfered with the right of labor to organize for the purpose of collective bargaining. Even in the inner clique of corporations in the National Association of Manufacturers, there have been outstanding examples of industrial statesmanship since 1937. Certain of the most powerful corporations have in good faith entered into collective bargaining agreements with their employees in conformity with the law and have contributed to the success of the national labor policy. An intransigent minority of powerful corporations continue to oppose the right of their employees to organize into unions of their own choosing. These corporations still occupy dominant positions in the National Association of Manufacturers. Under the guidance of this small but powerful minority of corporations, the National Association of Manufacturers has continued its traditional policies of opposition to labor organizations and to governmental action intended to improve conditions of labor.

"7. The committee condemns the deliberate action taken by the National Association of Manufacturers to promote organized disregard for the National Labor Relations Act. Such action by a powerful and responsible organization encourages disrespect for the law and undermines the authority of government.

"8. The National Association of Manufacturers' campaign of propaganda stems from the almost limitless resources of corporate treasuries. Not individuals but corporations constitute the membership of the association and supply its funds. It is this fact that makes the political aspects of the association's campaign of propaganda a matter of serious concern. In effect the National Association of Manufacturers is a vehicle for spending corporate funds to influence the opinion of the public in its selection of candidates for office. It may be

questioned whether such use of the resources of corporate enterprise does not contravene the well-established public policy forbidding corporations to make contributions in connection with political elections. The National Association of Manufacturers is to be condemned for cloaking its propaganda in anonymity and for failing clearly to disclose to the public whom it is trying to influence that this lavish propaganda campaign has as to its source, the National Association of Manufacturers.

"9. Finally, the committee deplores the failure of the National Association of Manufacturers and the powerful corporations which guide its policies to adapt themselves to changing times and to laws which the majority of the people deem wise and necessary \* \* \*."

Senator MURRAY. I yield to the Senator from Florida.

Senator PEPPER. Mr. Mosher, would you say that a very large percentage of the National Association of Manufacturers' membership voted for President Roosevelt in any of his elections?

Mr. MOSHER. I do not suppose very many of them did. We have a fairly large percentage of southern members. As a matter of fact, I have personally taken the NAM membership and studied it geographically and in various ways, in size, little and big, and in geography and it happens right across the United States that we have just as big a proportion of manufacturers in the South as in the North.

Senator PEPPER. Did any of your members vote for Roosevelt in any of his elections?

Mr. MOSHER. I would not know. I did not, if you are asking me that.

Senator PEPPER. Did you ever support him?

Mr. MOSHER. No, sir.

Senator PEPPER. Did you support President Truman?

Mr. MOSHER. No, sir.

Senator PEPPER. And you do not have any opinion as to whether the majority of your membership ever supported Roosevelt in his—

Mr. MOSHER. I suppose a majority probably did not.

Senator PEPPER. Well, now, can you name any so-called liberal legislation in the Roosevelt administration or in the Truman administration that the NAM has advocated?

Mr. MOSHER. Yes. I have to go to the record on it.

Senator PEPPER. You are the president, are you not?

Mr. MOSHER. I am not. I was in 1945. May I go to the record to supply the data?

Senator PEPPER. Can you think of any right now?

Mr. MOSHER. We will have to list what you call so-called liberal bills and see what our position was on them.

Senator PEPPER. I want to know what measures you have advocated here.

Mr. MOSHER. Our position has been pretty sound right through this period.

Senator PEPPER. To refresh your recollection, I believe you have indicated you did not favor the Wagner Act?

Mr. MOSHER. No.

Senator PEPPER. And you opposed it in court after it was enacted by the Congress?

Mr. MOSHER. It was opposed by manufacturing companies.

Senator PEPPER. Well, the members of the NAM?

Mr. MOSHER. Yes.



Senator PEPPER. Now, then, did you advocate social-security legislation that was enacted by the Roosevelt administration?

Mr. MOSHER. I would have to go to the record. We did favor some considerable part of that early legislation that came in.

Senator PEPPER. Did you advocate farm-support prices that were initiated by the Roosevelt administration?

Mr. MOSHER. I do not know. I think the record will show very clearly that NAM stuck to manufacturing problems and did not go into those other problems.

Senator PEPPER. What is your position now on farm support prices?

Mr. MOSHER. I do not suppose NAM has any position. I would have to check.

Senator PEPPER. You do not consider that that is so vital to the economy of this country that you ought to interest yourself in it?

Mr. MOSHER. Just a minute, Senator. NAM represents manufacturers and does not undertake to go into many of these other questions.

Senator PEPPER. You offered a good bit of advice to the country and to the Congress.

Mr. MOSHER. Only on those things.

Senator PEPPER. Did you not advise the country in advertisements in the newspapers about price control?

Mr. MOSHER. Yes.

Senator PEPPER. Well, did you think that—

Mr. MOSHER. I say that NAM only goes into the things that vitally affect the manufacturing segment of our economy.

Senator PEPPER. I suspect NAM goes into the things that NAM thinks is going to help the pockets of NAM.

Mr. MOSHER. I am afraid sir, you are just about 100 percent wrong on that one because I happen to know to the contrary.

Senator PEPPER. Well, I do, too. I have been around here a number of years, and I have never yet heard your people advocate anything that has helped the people to live better, get better wages, and have better living, and I want to tell you NAM is a greater enemy to democracy than American labor will ever be.

Mr. MOSHER. Well, that does not happen to be so.

Senator PEPPER. There are a lot of people that think so, and a lot of elections the voters think so, too.

Mr. MOSHER. Of course, as you repeat those remarks as often as you do, a lot of people might come to believe them.

Senator PEPPER. I believe a good many people have that opinion already. The general opinion is that NAM is the spearhead and the symbol of the reactionary business forces of this country that cannot see beyond the end of their noses.

Mr. MOSHER. Well, it so happens I personally know that is not public opinion.

Senator PEPPER. Well, as I said, NAM has not won many elections that I know about, although they have got all the money and the propaganda, and they generally control the press and the radio, and they control the prices, and they have the arbitrary power to fire and hire, generally, when they want to, but it just seems to me mighty few things in the little over 12 years I have been down here that will get anybody into a better house, get him a better wage, get his children in larger schools, and give his children better school teachers or better school houses, that I have heard NAM raise its voice for.



If labor is beginning to gain some economic bargaining power where they may force a decent wage, and they are not too successful at that, out of a recalcitrant and profiteering employer, then management mobilizes its might and they come rushing down here to advise Congress about democracy, and there is more democracy in labor unions than there is in management in America, and less featherbedding.

The Senator from Minnesota has said there is less featherbedding in the ranks of labor than there is in the ranks of management in the country. There is less tyranny, there is less abuse of power, there is less monopoly, there is less danger to the public welfare in organizations of citizens than there is in these corporate octopuses that stand astride the American people's price structure and control in a few hands the economy of this country.

There is not anywhere in the world where management and where the employer side has such immunity and such power as in the United States. Nobody, no political leader in America of any prominence, and no political party is advocating nationalization of anything, not even the public utilities, not even the transportation system, and yet when we try to get a measure of economic justice for the masses of the people who fight its wars—and, as a general rule, it was the poor people whose sons went to the battlefields and a lot of the manufacturers' sons who stayed at home and got rich, and I know that a lot of them—

Mr. MOSHER. Just a minute, sir. I am losing my temper.

Senator PEPPER. Well, I do not care; lose it.

Mr. MOSHER. I lost three members of my family in the war.

Senator PEPPER. I know who made the profits out of the war. I know who make the profits out of every war.

Mr. MOSHER. Who did make the profits out of the war?

Senator PEPPER. The management of the country.

Mr. MOSHER. Show it in the record. It is not here.

Senator PEPPER. They are making it today in the biggest mass of profits management has ever made, and right at the time that management is making the biggest profits they have ever made, why they have come down here and made a crusade to try to weaken the labor unions so that the workers will get a lesser share.

Senator DONNELL. Mr. Chairman, I move that the witness be permitted to testify, now that the Senator from Florida has testified so voluminously.

Senator PEPPER. The Senator from Florida has had a good example from the Senator from Missouri.

Senator DONNELL. I think that is possibly true. I think the witness likewise should be permitted to have a few words, if he desires. Did you say three members of your family died in the war, Mr. Mosher?

Mr. MOSHER. Yes, sir.

Senator DONNELL. I would like to have the record show that I mentioned Senator Albert Hawkes, our former colleague. If I am not mistaken, he is the head of the Congoleum Co., and I think he lost his son in the war. I do not think the loss of sons is confined to labor. I pay all tribute to labor, too, but I think the matter of loss of boys and girls, for that matter, has not been confined to one segment of our population.

Senator PEPPER. I made a generalization, and it is true of every war we ever fought, a few people stay home and make the money and the masses of the people go out and are slaughtered on the battlefields.

Senator HUMPHREY. Senator Pepper, in connection with your testimony about legislation, would you care to have inserted a record of the NAM on bills? Just a brief word about it?

I heard Mr. Mosher say that NAM was primarily interested in manufacturing matters before the Congress.

I have before me a document which states what they were against, according to the Harvard Business Review, the May issue of 1948, an article entitled "NAM: Spokesman for Industry," by Albert S. Cleveland. His article is presented for its value as a statement of the point of view held by a large enough segment of thoughtful observers to deserve recognition in open discussion. The author, who is lecturer at the School of Business, University of California, at Berkeley, and business consultant, deals with an admittedly controversial subject, and many of his judgments will not be accepted by readers. It is hoped, nevertheless, that it will serve constructive thinking and expression, the end result of which will be for the benefit of the whole industrial community.

That is the foreword, and I want to incorporate that in the record because these are some valued judgments. I wish to insert the article in its entirety. However, on page 356—

Senator DONNELL. Pardon me, Senator. Are you offering that for the record at this point?

Senator HUMPHREY. I am, sir.

Senator DONNELL. Is it admitted, Mr. Chairman?

Senator MURRAY (temporarily presiding). Yes, sir.

(The document referred to is as follows:)

#### NAM: SPOKESMAN FOR INDUSTRY?

(By Alfred S. Cleveland)

**AUTHOR'S NOTE.**—The primary sources of information for this article are the extremely voluminous written materials of the National Association of Manufacturers, 1895-1947, the records and reports of various congressional committees, other Government documents, and some unpublished NAM material: for more details see the author's "Some Political Aspects of Organized Industry" (Cambridge, Mass., Harvard University Thesis Collection, Harvard College Library, 1947).

American industrial management is organized neither formally nor informally as an integrated group. Yet among the thousands of local, State, regional, and national industrial organizations one group agency has declared itself the representative of all industry, and, to a significant degree, this claim appears to have gained public acceptance. That agency is the National Association of Manufacturers.

Businessmen need not wander far to hear rumblings against the NAM. Questions as to whether it has been objective, or truly working for the best interests of the country, or even realistically smart in its support of the actions and positions of its own members, are frequently raised, not only by those whose main interests might be expected to lie elsewhere, but also by members of the industrial family. Others, too, who fear that many of the traditional benefits of American society are in danger of disappearing in a wave of "isms," have grave doubts as to the net results of the association's activities. The NAM, therefore, is a topic of interest and concern to all who, as citizens, can help shape our social and economic climate.

In examining the NAM as "spokesman for industry" we shall be doing nothing more than has already been done extensively for union organizations like the AFL and the CIO as spokesmen for labor. Indeed, many of the remarks that will

be made in this article could be applied to them equally as well as to the NAM. Up to this time, however, very few observers, despite their criticism of the NAM, have ever cited chapter and verse or probed the reasons for the situation which they feel is not quite right. Accordingly, the present article will explore the objectives, the organization, and the workings of the NAM. The intention is to appraise its capacity for constructive industrial leadership on the basis of the way it has represented industry publicly and the nature of its opinion-molding activities.

In keeping with this purpose, no specific analysis will be undertaken of one important aspect of the NAM's activities, its direct service to members. This service, while extremely valuable, especially to small business, is largely informational and advisory and will be treated only to the extent that it bears upon the main theme. Likewise, no reference will be made to the association's research work, some of which underlies the membership service or otherwise contributes to understanding of difficult industrial problems (e. g., its current research into the question of stabilizing employment).

Furthermore, it should be noted that our basis for evaluating the NAM's capacity for leadership must be, perforce, an examination of its record. It is true that an element working for change has been developing recently within the association, and occasionally there have been some outward signs of its attempts to have the association break with the past. The December 1946 labor policy statement is a case in point. Without reference to the merits of its various provisions, there can be no question but that the statement marks a distinct change in formal policy. The "Declaration of NAM Labor Principles" adopted at the annual convention in 1903 had previously served as policy guide on specific labor questions. (Both the 1903 declaration and the 1946 policy statement are reprinted in an appendix to this article.) But will this internal development shift the basic direction of the association's public activities? The analysis presented here should emphasize the crucial nature of that question.

While the article is critical of the association's record, it should be made clear that the association has among its membership and within its top-group officials many forward-looking and enlightened individuals. There is no intention here of criticizing any man or company as an individual. Indeed, there is no intention of criticizing the association itself for the sake of criticism. Any reflection on its activities or principles flows only from sincere belief in industry's ability to contribute to the welfare of the country as a whole, and hence the transcendent importance of constructive leadership on the part of the group agency that claims to be "industry's spokesman."

#### NEED FOR LEADERSHIP

The political skirmishing preliminary to the 1948 national elections gives increasing evidence that organized interest groups are, to a significant degree, participating in many functions traditionally reserved to political parties. This is perhaps most clearly apparent within the labor movement where union strength is rapidly mobilizing for political action. The numerical strength of the business and industrial community, on the other hand, is such that complete group solidarity at the polls is of little significance in terms of final results. Consequently, industrial organizations which seek to influence the political climate must of necessity "sell" their programs to large numbers of nonmanagement voters.

Under these circumstances, the type of industrial leadership which gives promise of popular appeal through realistic appraisal of the Nation's economic and social needs is deserving of support. On the other hand, an opinion-molding program based on group self-interest might not only bring discredit to the organized agency which proposes it but also harm the long-term interest of the entire industrial community. The danger is that public opinion might turn away from industrial leadership, and industrialists would find themselves in an unfriendly political atmosphere, subject to a greater rather than lesser degree of public control.

In which of these two categories does the NAM's program fall?

The NAM is currently devoting its major efforts to the development of business and public confidence in industrial leadership, as well as in itself as the focal point of organized industrial activity. The ideal is held out of a society in which the productive elements enjoy a high degree of economic sovereignty free from political superintendence. The core of this sovereign industrial system, and the seat of industrial statesmanship, would be the NAM. As "spokesman for American industry" the association contends that it is the agency through which indus-



trial leadership is activated, that its membership is representative of industry as a whole, and that its policies are determined in the best democratic tradition.

Pursuant to this purpose the association is currently engaged in an extensive program, including the raising of funds to implement its policies, designed to influence industrial opinion, public legislation, public administration, and (most ambitious and far-reaching) the molding of public opinion so as to create a political and social climate favorable to the achievement of NAM's primary objectives. Underlying the public relations aspect of this program are three basic concepts, of which the association apparently is firmly convinced: (1) That favorable public opinion is the most important single factor in securing long-range objectives; (2) that the loss of industrial leadership in national affairs during the 1930's was primarily due to gross public misunderstanding of the functions, the purposes, and the accomplishments of American industry, caused in large part by the false and misleading propaganda put out by others; and finally (3) that the private enterprise system is in serious jeopardy, with strong subversive elements at work undermining public confidence in American economic institutions.

The opinion-molding program embraces both a series of short-range activities designed to meet current issues and a variety of long-range efforts aimed primarily at the sources of opposition strength. Both parts of the program utilize all the tools of public relations (radio, newspapers, press services, speeches, advertising, group contacts, hand bills, pay-roll stuffers, pamphlets, billboards, and so on), and both are of course aimed at influencing public opinion. The short-range activities seek to promote or impede particular legislative proposals, whereas the long-range activities are designed to remove permanently from the public mind what the association terms "leftish drift" and replace it with confidence in "industrial sovereignty" and belief in the soundness of industrial leadership.

While one may wonder about the wisdom and in particular the categorical quality of some of the judgments involved, this program should nevertheless be recognized as the standard pattern for a group agency acting primarily in the interest of its members. Of course such self-interest does not need to be at odds with the welfare of society as a whole, particularly if the group takes the long-run view that its own fortunes are bound up with a sound and happy society. Nor is conservatism of outlook necessarily inconsistent with constructive leadership, provided it is not of the character which automatically resists adjustment to changing circumstances. There are many sides to every important question, and it is well to have all points of view represented. The NAM, however, lays claim to authoritative representation of all industrialists and offers itself as the focal point of national leadership. It is on this score that a further examination into the evidence available raises questions concerning the association's capacity for industrial statesmanship.

If the NAM fails to offer constructive industrial leadership, it will be the cumulative result of various internal institutional arrangements, inherent attitudes, and natural limitations. Foremost among these is the limited and specialized group of objectives which the association has pursued since its inception in 1895.

#### LIMITED OBJECTIVES

Like all group agencies the NAM has its formal purposes. In general, these embody three basic lines of endeavor: (1) To develop and promote sound industrial practices; (2) to foster industrial trade both at home and abroad; and (3) to create favorable public and governmental support in matters particularly relating to industrial interests. However, because formal declarations are seldom adequate expressions of the purposes of private groups, it is necessary to look to the countless informal statements of group leaders and the techniques and practices which give form and substance to group life.

In this light the NAM's objectives appear to have been: (1) Reduction of the bargaining position of organized labor, both with respect to direct employer-employee relations and to indirect governmental sources of union power; (2) minimization of the tax burden on industrial profits and managerial compensation; (3) elimination, modification, and prevention of public regulation or Government participation in industrial functions and processes; and (4) encouragement of direct and indirect public aid to industry if not in conflict with other objectives.

The association's policies on specific matters have been determined in the light of these objectives. Moreover, although the techniques through which the asso-



ciation has pursued these objectives have undergone considerable change in both nature and emphasis, the basic objectives themselves have not altered appreciably since the turn of the century. Furthermore, these objectives appear to be so ingrained in the customs and traditions of the group agency that in many cases the response to particular circumstances seems almost automatic. Careful analysis of a large quantity of NAM published literature amply supports this conclusion.

Thus, for example, the association has periodically prophesied a State-regimented society (if government were not curtailed) from 1900 right up to 1948, when President Morris Sayre was reported in an NAM publication as saying:

"The President's economic report to Congress January 14 simply completes the picture of the planned economy which the Administration hopes to impose upon the people of this Nation.

"If conclusive proof of this hope is needed, it can be found in the recommendation that the power of taxation be used to interfere with the freedom of people and business to spend or save as they choose.

"It is good that these great issues have been so sharply drawn because both the Congress and the people can now decide whether freedom or regimentation is to be the hallmark of our Nation in the eventful days and years to come."<sup>1</sup>

The very fact that two recent instances of a different position taken by the NAM, the 1943 proposal of a 90 percent excess-profits tax and the 1946 labor policy statement already referred to, have been regarded as revolutionary (by the press and also by the association) indicates how few the exceptions to NAM's adherence to its traditional objectives have been to date. The fact that there have been differences of opinion within the association does not alter the effect of its public record, on the basis of which is industrial statesmanship must be appraised.

*During the 1930's.*—When the Nation faced complete economic collapse in 1932 industrial leadership was conspicuously absent. All groups looked to Government, which indeed was the only agency having sufficient authoritative power to do what was needed. After the initial "hundred days" of the first Roosevelt administration the NAM grudgingly accepted the NRA, but soon abandoned it as the implications of the labor provision became clear. From that point on the association vigorously opposed the efforts of the national administration to alleviate the shocking distress of millions of unemployed and underprivileged citizens. The NAM was wholly lacking in a constructive program suited to the circumstances. "Free enterprise," the maintenance of property rights, and the "American way," had little appeal for the unemployed, the homeless, and the hungry.

Throughout the entire period of the 1930's and well into the war years the association opposed; never did it lead. Unable to accept restrictions imposed from without and estopped from developing constructive policies of its own, the NAM established itself as protector of the status quo. The philosophy and context of the various phases of the New Deal will long be subject to debate, but few will disagree that the era called for strong, vigorous leadership from a source that could rise above vested interests and was willing to seek out and accept constructive change. By this test the NAM failed to measure up.

Typical of the NAM's negative attitude was its struggle against what it terms "socialistic legislation" during the period. Of 38 major legislative proposals enacted into law between the years 1933 and 1941 the NAM opposed all but 7, sometimes on the basis of their objectives, sometimes on the basis of particular provisions therein. Consider the following record:

*Legislation opposed by NAM.*—Securities Exchange Act, Reciprocal Trade Agreements Act, National Labor Relations Act, agricultural price parity, Railroad Pension Act, public works, Social Security Act, emergency work relief, Banking Act of 1935, Guffey Coal Act, Public Utility Holding Company Act, Emergency Transportation Act, Walsh-Healey Act (Government contracts), Robinson-Patman Act, Anti-Strike-Breaking Act, 1936 Revenue Act (corporate tax section), Guffey-Vinson Coal Control Act, Copeland Food and Drug Act, Fair Labor Standards Act (wages and hours), executive reorganizations, Agricultural Adjustment Act (1938), unallocated relief appropriations, Federal relief measures (FSA, NYA, PWA, and pump priming), undistributed profits tax, Trust Indentures Act, National Guard Act (rehiring provisions), Transportation Act of 1940, extension of Reciprocal Trade Agreements Act (1940).

*Legislation approved by NAM.*—RFC (loans to small business), Housing Authority Act, direct loans to business, National Housing Act, Corporate Reorgan-

<sup>1</sup> Trends in Education-Industry Cooperation, vol. IV, No. 1 (January 1948), p. 2.

ization Act, Wagner-Steagall Housing Act of 1937, Miller-Tydings Act (resale price maintenance), reduction in capital gains and corporate surtax (1939).

Without exception the measures favored by the NAM provided some sort of aid to business and industry. Without exception rigid opposition was maintained against similar assistance to other groups and against all regulatory measures pertaining to industry. Whether or not the NAM was justified in its stand on some or many of these items, it is the "without exception" characteristic of such a record that makes it necessary to ascribe it to narrow and limited group self-interest.

The branding of social security as totalitarian when it was first proposed, the wartime barrage of propaganda creating the impression that the Government and labor were using the emergency as a means of furthering their own antidemocratic ends, and the ready willingness of the association's policy makers to lay the blame for all social and economic ills at the feet of other groups or institutions offer further evidence of the narrow base from which the association has operated. This list might be multiplied severalfold, and few exceptions to the criteria named above would be found.

*Recent position.*—Rationalization of narrow group self-interest seems to be the only way in which to explain how, in 1943, the association could advocate the removal of price controls only on the basis of a balanced supply-demand relationship, and yet in 1945 it could adopt a highly mechanistic and artificial formula (based on the War Production Board index of munitions output) for terminating all price controls by February 15, 1946. This also explains how the NAM can seriously offer substantial reduction to income taxes as a means of decreasing inflationary pressure and how it can propose, in the name of all industry, that European aid be withheld from nations whose systems for producing and distributing goods do not closely parallel our own.

The association's 1946-47 offering in the name of industrial leadership was an all-out effort to remove three "road blocks" to prosperity: (1) Price controls, (2) the lack of a satisfactory national labor policy, and (3) inflationary fiscal policies. The first two, from the NAM's point of view, have been largely achieved, and the third is being currently pursued with usual thoroughness. The association's influence on current congressional policy making cannot be measured, but there is little doubt that NAM's advice is sought and frequently heeded in the writing of legislation. The marked similarity between specific measures developed by the NAM and those introduced into Congress can scarcely be coincidental. This is particularly true with respect to labor relations, price control, and fiscal legislation.

At the same time it must be pointed out that in the past the NAM has not been very successful in getting legislation passed, which is a much different matter; indeed, the NAM's approval of specific legislation has often been described as "the kiss of death." Moreover, examination of the leadership offered in price and labor matters suggests that the recent successes may prove only temporary. The termination of price controls, for instance, not only failed to produce the increased production and price stability so positively and confidently promised by the NAM but, on the contrary, was followed by price inflation of alarming proportions. The resulting income-cost squeeze on wage and salaried workers, plus the very substantial increase in the over-all profitability of industrial enterprise, has certainly not added to the public prestige of industrial policy makers.

Whether the Taft-Hartley Act basically was wise legislation will not be clear for some time to come. As a practical matter, however, the NAM's campaign for support of the measure not only provided labor with a unifying issue of great emotional potential but also furnished a living symbol against which pro-labor sentiment could be marshaled. It is worth noting that the association found it necessary and desirable to deny publicly that it "authored" the bill, which in fact did carry one or two provisions not approved by it, e. g., the provision requiring affidavits of noncommunism from union officers. Here again, to the extent that the NAM is believed to be the representative voice of industry, the not inconsiderable political opposition of wage earners may be directed against all industry.

On the occasion of the NAM's fiftieth anniversary, President Witherow acclaimed the association's past as "a record \* \* \* of unswerving devotion to American ideals, of advocacy of policies and reforms pacing the industrial development of the Nation, of solid achievement in the public interest. \* \* \*"<sup>2</sup> Yet in support of this eulogy he could only point to the encouragement of trade;

<sup>2</sup> "Fifty Years of Progress," Report of the President, Golden Anniversary Congress of American Industry, NAM News, December 15, 1945, sec. 2, p. 5.

creation of the Department of Commerce, the National Safety Council, and the Federal Reserve System; advocacy of the Panama Canal, pure-food laws, and western reclamation; the sponsorship of various business organizations; and certain efforts with respect to privately managed compensation, health, and pension benefits. A significant aspect of these achievements is that all of them occurred prior to 1920. Thus even the association itself in 1945 found little evidence of constructive leadership during the previous 25 years.

*Self-interest.*—The extreme conservatism of the NAM, to the extent that it is due to the traditional practice of basing policy on the narrow and precarious base of limited and short-run self-interest, is reason for real alarm.

Such pursuit of narrow self-interest is the kind of thing which in group efforts like the NAM's develops almost automatically and in spite of soul-searching in policy committees and protest on the part of individuals; to avoid its becoming the dominating influence on group action requires, literally, heroic resistance. Yet the fact that the self-interest may be in large part unconscious does not make it less serious. The rationalization which makes such a situation possible may be an honest one—to the effect that industry is wisest and therefore the public will be served best if industry can establish, maintain, and augment its position—but the record shows that it is nonetheless only a rationalization.

A major weakness of narrow self-interest is that, no matter how well it is rationalized or disguised, it will sooner or later be revealed for what it really is. Furthermore, once a program of this sort is undertaken, a strong tendency develops to push it to extremes. The need for greater and greater advantage and the pressures of aroused opponents force the group agency into rigid defense of practices of which it may not wholly approve. It may well be that the association cannot or should not be expected to do more. Perhaps the voluntary nature of its membership, its dependence upon a relatively small number of companies for financial support, and its lack of sanctions preclude the possibility of such a group's seeking out new patterns of thought and action, critically examining existing structures and practices, attempting to correct situations which run counter to basic needs, and above all evidencing a willingness to experiment and to accept change. If this is true, then the hope of industrialists under such leadership for any extended period of either relative economic "sovereignty" or significant national economic-political influence is very faint indeed.

The alternative is to reverse the procedure—to work from the broad base of public needs and desires, and to attempt the guidance of industrial thought into constructive efforts to find permanent and satisfying outlets for social pressures rather than to divert or block such pressures temporarily. The NAM's often-repeated experience of initial success followed by complete defeat should give pause to those who believe that public confidence in industrial leadership can be "sold" like breakfast food, soap, or toilet preparations, or that the adaptation of industry to changing social and economic needs can be effected by hiring advertising specialists to do industry's thinking.

#### UNITED FRONT

Another important reason for the NAM's inability to offer progressive leadership is its insistence, once a policy position has been formulated, upon securing "unit thinking and unit action" on the part of the membership and the larger industrial population from which the membership is drawn. The concept is, of course, in keeping with the association's role as an industrial pressure group, but it seems perfectly evident that the exertion of pressure is a very different thing from the exercise of leadership. The belief that oneness of mind is essential to group purposes is not only exceedingly artificial, particularly when it is sought in the face of inherent group differences of opinion and even of strong debate in the policy-forming elements, but is also dangerous to both group welfare and the larger interests of society as a whole.

*Effect on group itself.*—From the point of view of the group, the effort needed to maintain a united front places great strain on an agency's institutions and requires a diversion of resources, both human and financial, from positive purposes to the essentially negative function of keeping the structure and the membership intact. The next step is likely to be that each policy pronouncement, each pamphlet, news story, radio broadcast, and legislative representation must be carefully squared with the party line: meetings, conferences, and conventions must be managed in such a way that conflicting points of view are either suppressed or quickly compromised into meaningless platitudes. (It is typical



of the NAM's efforts to mold membership opinion and keep it unified that, in reporting such matters as congressional hearings to its members, it usually prints in full the testimony of NAM representatives and the opinions of those favorable to NAM policy but drastically cuts the explanations of other points of view. This is the kind of thing that can be extremely harmful if it gets out of hand.)

The diversion of resources needed to keep up the solid front becomes cumulative as membership grows and new activities are undertaken. Each development of this nature exposes the solid front to new dangers requiring both additional defenses from outside attack and reinforced security measures against internal sabotage. In the event of real economic crisis the strain may become so great that the entire structure collapses. Under such circumstances the party line becomes meaningless; yet because the group agency is engineered for single focus, it cannot adapt itself to a change of scene even though the old image is completely blurred. The inevitable result is loss of membership and financial strength with attendant loss of effectiveness. (There has been a striking correlation between general economic conditions and NAM membership. Thus the numerical strength which had been growing during the late 1920's turned sharply downward from 1929 to 1934. Since that time it has again been increasing steadily.) Thus, particularly when circumstances call for vigorous leadership, the "united front" type of agency is so busy defending what no longer exists that it has no time for realistic analysis of basic causes and no urge or stimulation to innovate.

The concept of unit action is also wasteful of prospective group talent, for only those who thoroughly endorse the party line will take active interest in the formation of policy and the development of effectuating programs. (A recent article in *This Week*, for example, suggested that Robert W. Johnson, president of Johnson & Johnson, had forfeited his chances to be president of the NAM by writing a provocative and unorthodox book, *Or Forfeit Freedom*; <sup>3</sup> such at least is the public impression.) This kind of situation, in turn, may easily give rise to a small active minority which "runs" the group agency in accordance with its own interpretation of what is needed. The resulting disenfranchisement of the majority effectively limits the availability of new points of view and stifles the constructive criticism of established attitudes. When carried to extremes this concept produces a rigidity that effectively prevents the group agency from adjusting to strong social pressures, thus placing that group at odds with its own society.

*Effect on community.*—From the point of view of the broader community, the insistence upon group unity is both expensive and dangerous. It is expensive because society is deprived of able leadership which might otherwise develop from group association. (And this does not mean the kind of leadership which demands all or nothing, denies social or political status to other groups, and insists upon full, uncompromising industrial sovereignty.) The effort to maintain unity often drives the group to rigid policy extremes or reduces policy-determining techniques to devices through which nonuniform data are shaped to fit a common mold. The sterility of such policy making in terms of social value is obvious. On the other hand, policy determination which stems from open debate, which admits of conflicting points of view and welcomes proposals aimed at adjusting industry to social needs rather than uncompromising defense of the status quo, may develop leadership which serves society by leading social change instead of opposing it.

The danger inherent in the united front concept stems from the fact that this point of view inevitably drives deep wedges between various interest groups and thereby enormously complicates the problems which produced the original breach. A group intent on maintaining the status quo will invariably seek to unite its membership against those who advocate any change. If a common enemy is lacking, one will be created. Thus the appeal is fear—fear of other economic and social groups, fear of various isms, fear that a preferred status or entrenched security will be lost. Unity may temporarily result from such activities but only at tremendous social cost. The groups and agencies against which these appeals are made react in like fashion. Common enemies are developed on both sides, fear turns to hate, and whole segments of society are pitted against each other in a conflict based on the wholly false assumption that one or the other must dominate.

<sup>3</sup> Jack H. Pollack, "Bob Johnson \* \* \* Tycoon Extraordinary." *This Week Magazine*, New York Herald Tribune, sec. VIII, January 4, 1948, p. 4.



Complete unity can only be achieved through a program of meaningless generalities or rationalization of the narrowest of group interests. (To a large extent this course has been followed by the NAM in the past under the apparent belief that public opinion can be similarly channeled through the application of advertising techniques.) The fallacy and tragedy of this type of thinking is that it solves no basic problems, introduces violent emotion into social areas already split and torn by such feelings, widens the gaps between economic groups, and forces society, acting through government, to make punitive legislative expeditions in an effort to hold the struggle within bounds. The final goal then becomes government itself—a tremendous battle for power in which each side, using the same weapons, attempts to conquer by creating public fear of other important and essential segments of society.

It is difficult to estimate the effectiveness of the association's united-front policy, particularly with respect to its influence on the membership and the industrial and business community at large. Evidence exists which indicates that some internal ferment has developed during the past few years, but with few exceptions this has not as yet been reflected in the association's policy pronouncements. Certainly it is to be expected that a considerable variety of opinion exists within the association; and if divergent points of view are permitted open expression, a broader type of leadership may develop. Unless unit thinking and unit action ceases to be considered an essential objective of the association's opinion-molding activities, however, it is highly improbable that the NAM can provide the kind of leadership which over the long run will attract more than a limited and specialized following.

#### PROCEDURES FOR POLICY MAKING

Mention must also be made of a number of internal or institutional factors which may serve to limit the constructive qualities and the effectiveness of the leadership which the NAM is able to offer industry and the Nation. In general, the association's formal structure is closely patterned along business lines, with the result that the rank and file of members enjoy very limited participation in policy making.

The board of directors is the governing body. Directors are elected in proportion to the number of NAM-member companies in each State (but no State can elect more than three). Each member company has one vote. Twelve directors-at-large are also elected by member companies. Seven directors-at-large are appointed by the president, subject to board approval. Nine directors are selected from affiliates of the National Industrial Council. Former NAM presidents and vice presidents also serve on the board, as well as the current president and vice presidents. The number on the board varies some year by year: in 1947 it was 153. The board elects annually its own chairman, chairman of the executive committee, chairman of the finance committee, president of the association, 10 national vice presidents, 11 regional vice presidents, the executive vice president (ranking staff member who is in charge of all operations), the treasurer, and the secretary.<sup>4</sup>

Full authority for policy formation is concentrated in the board of directors and the executive committee appointed by the board. Beneath this committee and responsible to it are six standing policy committees, which are primarily staffed by executive committee members and which appear to be the basic institutional elements from which emanate the association's stands on various issues. NAM policy is formulated usually through standing committee recommendations, with approval by the board or the executive committee, or by independent action of either the board or the executive committee. Although it may be formulated also by formal vote of members in attendance at the annual convention or by referendum ballot of at least 51 percent of the membership, two ways which at least permit a wide degree of member participation and expression of varying points of view, these methods are virtually inoperative.

*Nonparticipation by membership.*—In earlier days the association frequently polled its membership on important national problems, but since reorganization in 1933 the referendum has been used only in a highly restricted sense and almost never for the purpose of ascertaining industrial opinion. The questionnaires sent out to the membership from time to time are primarily for the purpose of obtaining information on various technical matters, such as industrial research, absenteeism, taxation and profits, strike losses, and employment and production plans.

<sup>4</sup> See *The Public Be Served*, a pamphlet put out by the NAM in 1947 to describe its character and activities.

Perhaps the nearest the association has come to an opinion poll in recent years was a questionnaire relating to price control. Every tenth firm on the membership roll was asked these two questions: (1) "Do you believe that price controls hamper the production of manufactured goods?" with a choice of "seriously," "moderately," "a little," or "not at all" as answers; and (2) "Do you believe the removal of price controls would increase the production of manufactured goods?" with a choice of "Yes" or "No" as answers. Total replies numbered 673 (46 percent of those polled). Of this number, 631, or 94 percent, answered either "seriously" or "moderately" on the first question and "Yes" on the second question. Specific opinion was not requested as to the over-all necessity or desirability of price controls; yet this was the important question on which the board of directors subsequently proclaimed the association's official policy to be the complete and immediate removal of all price controls.

That the association did not accurately represent the opinion of the majority of its members in this instance is indicated by reliable reports that its extreme position on price control came very near to creating a serious internal break. That serious differences must have existed is borne out by such "straws in the wind" as the fact that out of 326 industrial firms questioned by the Commerce and Industrial Association of New York at about the same time, 89 percent favored continuation of price controls, provided certain modifications were made. The United States Chamber of Commerce also took a more moderate position, recommending retention of controls for a limited period.

As for the annual convention, it is not conducted as a deliberative assembly of industrialists convened for legislative purposes. A very large convention resolutions committee ostensibly prepares NAM's annual platform (now abandoned as a regular feature) and convention resolutions. However, a small subgroup of a special pre-convention coordinating committee actually drafts the resolutions, which are then successively approved by the coordinating committee, the executive committee, and the board of directors. At this point they are presented to the resolutions committee. Members who wish to present their points of view to the resolutions committee are permitted to make appointments outside the committee room door and to submit suggestions in writing. The resolutions are then submitted to the convention for ratification. Generally speaking, the principles adopted at the convention contain lofty sentiments with which no issue can be taken. In line with the purpose of the convention, which is largely opinion molding, there is, of course, little discussion, debate, protest, compromise, or any of the usual procedures through which free legislative bodies express tendencies, develop followings, and arrive at representative conclusions. Such tactics may create the impression of unity, but they scarcely can be cited in support of the claim to authoritative industrial representation.

The effective elimination of the referendum and the convention reduces policy making to the executive elements of the association. Although the standing committees can, and usually do, recommend policy, their meetings are poorly attended (less than 50 percent average attendance), particularly by members who are not also members of the executive committee, and their actions are, of course, subject to the approval of the board of directors or the executive committee. Furthermore, since the board of directors meets only 10 days out of each year, it is apparent that the day-to-day commitment of the association to various lines of action and the development of effectuating techniques is largely determined by the executive committee, a small group of officials of whom none are elected through direct membership voting, and as a practical matter by the full-time secretariat, which "interprets the NAM constitution and actions of the board of directors and executive committee." Thus, despite the fact that each member company has an equal vote in the election of directors, the political distance between NAM policy and the membership in whose name it is pronounced is considerable. The opportunity for genuinely representative opinion to arise under such an arrangement is very slight.

#### LACK OF REPRESENTATIVENESS

The foregoing suggests the possibility of an active minority which determines association policy and runs its affairs. Although space does not permit analysis of the full extent and activity of the inner group, it can be stated in summary that active NAM leadership has been largely provided by the representatives of a very small group of large industrial firms. In fairness it should be stated that the association has made every effort to get members from small companies and companies in less accessible sections of the country to take an active part

in its affairs. As a consequence the roster of officers and committee members at any given time does contain the names of many men from such companies. The point is that most of these men cannot afford to give continued service. The actual situation, therefore, is such that from 1933 to 1946, 125 corporations have held 63 percent of all directorships, 88.5 of executive committee memberships, 79 percent of the finance committee memberships, and 52 percent of the major executive offices. This group constitutes approximately eight-tenths of 1 percent of current membership and has never exceeded 4 percent. The self-perpetuating characteristic of the active minority is indicated in the fact that yearly turn-over of its members has averaged but 1.4 percent for the entire 14-year period, as compared to approximately 25 percent turn-over for the association's governing hierarchy as a whole.

This kind of situation is no different, of course, from that which obtains in many group organizations, particularly of the pressure type; certain labor unions offer an obvious example in another field. More often than not, at least initially, it is the result of evolution and force of circumstances, rather than deliberate intention to dominate and control. But whatever the cause, and no matter how many unsuccessful attempts may have been made to avoid it, the effect is the same.

Perhaps more significantly, in this particular case, the identity of the inner policy-making group indicates that active leadership within the NAM comes primarily from among the very largest manufacturing corporations. Thus none of the 125 firms referred to employs less than 500 workers, and 84 firms, or 67.2 percent, employ more than 2,500 workers. The NAM has frequently asserted that more than 70 percent of its members employ fewer than 500 workers. It is thus evident that in terms of size the firms and industrialists that have dominated the association's governing elements have not been representative of the NAM's own membership. This conclusion is further substantiated by analysis of the balance sheet assets of the inner group. Of the corporations comprising the active minority, 90 percent have assets in excess of \$10,000,000, while the assets of 44 percent of these firms exceed \$50,000,000.

*Source of funds.*—Most of the funds to support the association's activities also came from a minority group. Prior to 1933 the NAM was financed almost entirely from membership dues. Some income was derived from various publications and business services, but generally these sources were highly uncertain and at best provided meager revenue. In 1933-34 it was recognized that if the association was to be effective, it would need a much larger budget than had heretofore been available. Consequently, a graduated system of annual dues was instituted based on corporate net worth and ranging from \$50 to \$10,000 per member. In addition, a vigorous campaign for contributory financial support was conducted both among members and among nonmember companies.

By 1937, 3 years after reorganization, receipts had increased from \$240,900 to \$1,439,000, and by 1945 the association's yearly income exceeded \$3,500,000. The NAM financial report for 1945 reveals that of the total income amounting to \$3,663,460, membership dues accounted for 57.9 percent or \$2,121,735 while 41.7 percent or \$1,528,200 was received from subscriptions to the public relations program. Interest on investments and miscellaneous receipts amounted to \$13,525. On the expenditure side, \$1,979,000 was disbursed for what the association terms the "NAM program," and \$1,736,809 was spent for public relations. It is interesting to note that the amount expended for public relations is approximately equal to total subscriptions for the public relations program, suggesting that the "educational" phase of NAM activities is largely financed in this fashion.

Several important sources of indirect revenue also are available, and these probably exceed in value the mounts received from dues and contributions. For example, the 1936 outdoor advertising campaign for which the association paid \$50,000 would have cost \$1,250,000 had not free billboard space been furnished. Similarly, free newspaper space and donated radio time were valued at more than \$2,000,000.

The extent to which the NAM's impressive financial resources are contributed by the active minority cannot be determined with precision, but sufficient evidence is on hand to suggest that the group bears a very large proportion of total expenses.

*Total membership.*—Irrespective of the existence of an inner group, the total membership of the NAM is scarcely of sufficient numerical strength to substantiate the association's claim to representation for all American industrialists. The association has a maximum of 17,000 member firms, which comprise less than 8 percent of all manufacturing establishments. Furthermore, the claim to



"authoritative representation" on behalf of the 40,000 or so firms holding membership in associations affiliated with the National Industrial Council has almost no foundation in fact, since the council is not a policy-making organization and the paid staff representatives who attend council gatherings have no authority to legislate policy on behalf of either member associations or individual firms.

Although it is no doubt true that NAM members produce more than 50 percent of the total output of American industry and employ a majority of industrial workers, this in itself is an inadequate basis for democratic group representation in political-economic matters. An essential factor in the democratic process is the concept that political influence is not based on wealth or economic power. If, as the NAM maintains, the group agency is truly democratic, each member firm exercises equal political strength in the determination of association policy. By applying the same logic to all industry, the conclusion seems inescapable that the NAM can claim representation for only its own membership.

#### POSSIBLE CHANGES

The foregoing is not intended to be unduly critical of the structure and purposes of the NAM. If the association is regarded simply as an instrument for the preservation and advancement of narrow group interests as interpreted by its dominant members, it has on the whole developed and functioned normally. In view of the long-run significance of the NAM program, however, it is particularly important that industrialists in general be cognizant of the type of leadership thus being offered to them and to the Nation. It may be that American industry generally endorses the NAM program, although the inability of the association to recruit more than a small percentage of the industrial population appears to indicate something less than enthusiastic approval. On the other hand, it may signify a generally passive attitude toward industrial politics, which in turn may partially account for the apparent control by the active minority and the apparent absence of any significant protest.

True, the fact that the policy makers' uncompromising stand on price controls provoked some sharp criticism from within the association, and in addition that a good deal of opposition is currently developing over the charge made by small-size and medium-size firms that the NAM is being run by and in the interest of very large industrial corporations, is a healthy sign; as are reports that some of the policy committees are having heated sessions. Moreover, it is reported that the new president, Mr. Morris Sayre, of the Corn Products Refining Co., has indicated a desire to improve the association's program, and the current executive committee also contains quite a few new names. There is the inevitable question, however, whether the degree of protest developing within the group agency itself is as yet strong enough or well enough focused to insure constructive group leadership for American industry.

What, then, is needed? What direction should the change take, and how far should it go, in order to maintain long-run public confidence in private economic leadership?

In terms of structure the association might discard its predominantly business forms of organization and provide for the free election of top officers and more extensive participation in policy determination by the membership. This should help rid the group agency of the self-perpetuating tendencies of its inner circle and permit the development of whatever progressive leadership exists within the industrial community. Such a move should also help to attract a much larger percentage of the industrial community. This, in turn, might perhaps lead to the development of a program which seeks to integrate industrial interests with broad social and economic needs rather than a short-sighted effort to mold public attitudes in the image of rationalized and limited group self-interest.

In this connection it seems pertinent to point out that successful political leadership in a democratically constituted society is primarily dependent upon accurate interpretation of public attitudes and desires and the development of specific programs which give reasonable hope of successful accomplishment. If a group of industrial statesmen is to emerge and if organized industrialists hope to enjoy more than temporary success in the political-economic field, they must sense public need before it crystallizes into dissatisfaction and before competing groups seize the initiative.

In addition, the group agency must have sufficient strength, based on real intragroup confidence and appeal, to induce individual members to conduct their economic activities with an eye to something more than short-run profits. This is admittedly most difficult and perhaps may be impossible for a group agency



whose membership is purely voluntary. Yet how can organized industrialists hope to exercise national leadership or inspire public confidence in private economic planning if they are unwilling or unable to eliminate abuses within their own economic community? Professional associations and some labor organizations are able to prescribe group ethics and to discipline members who violate them. At present the NAM cannot, and this lack of effective sanction explains in part the sterility of many of the Association's platforms and its failure to recognize or propose remedies for specific deficiencies in the management of industrial affairs. Admittedly such a practice might be dangerous; the way to avoid abuse would be to make sure that the ethics prescribed represented the democratic will of the Association as a whole.

The NAM has stated that operating practices of its members in such matters as wage rates, working conditions, production plan, prices, dividends, purchasing, and financing are not proper subjects for association guidance. Yet these decisions, in the aggregate, constitute the real and vital substance of industrial activity. They determine the kind, quantity, and quality of goods produced, the level of employment, the national income, the value of the consumer's dollar, and the kind of living enjoyed by millions of citizens. A group agency which cannot or does not care to interest itself in how its members are translating principles into working decisions cannot honestly claim to be an instrument of constructive leadership.

Within its present framework of operations, the NAM can at most search out those areas where industrialists are already in agreement. Unable to control the conduct of its own members the association tends to rationalize all industrial activities into the "good" category, label those not in agreement as "enemies" of the system, and lay the Nation's ills at the feet of competing groups or of those who attempt to impose restrictions upon industrial conflict.

Those who would argue that the creation and enforcement of a code of industrial ethics would serve only to alienate members and thus destroy the possibility of effective group effort might well examine the experience of organized economic groups in law, medicine, and, to some extent, accounting. Without question, the ability of these groups to develop and enforce professional codes has been an important factor in keeping such groups relatively free from public control and in making possible the direct and respected participation of group representatives in the formulation of whatever legal sanctions have been necessary.

Let organized industrialists define economic abuses and act against them within their own community. Let them realistically examine the American industrial structure and develop adequate group controls in those industrial areas where real economic competition has ceased to exist. Let them consider constructive change as normal and desirable, and lead rather than forever lag behind. Let them look beyond the short-run profit motive to the old but still valid goals of true free enterprise. Until at least a start is made in this direction, the possibility of progressive leadership's emerging from within industry is very remote.

There are, however, some hopeful signs that a degree of industrial statesmanship is developing. The Committee for Economic Development, admittedly in a different sphere, has attracted a large and growing membership since its formation in 1943. The United States Chamber of Commerce has shown signs of progressive thought. The traditional attitudes and responses of industry are being challenged with greater frequency by responsible industrialists—men like Paul Hoffman and Eric Johnston and many of the individual members of the NAM itself, men who in the midst of the greatest prosperity ever known find themselves continually worried about the future and their ability to survive, men who regardless of group affiliation are sincerely searching for a working creed. The need for such a creed is plainly evident. It remains to be seen whether industrial management, and the NAM in particular, can break with traditionalism and supply a new industrial leadership. Certainly it is greatly to be hoped that such an aggregation of individual talents and resources will meet the opportunity that lies before it.

#### APPENDIX A—DECLARATION OF NAM LABOR PRINCIPLES (1903)

(Adopted at the annual convention in 1903, with the exception of item 9 which was added at the 1904 convention)

The National Association of Manufacturers of the United States of America does hereby declare that the following principles shall govern the association in its work in connection with the problems of labor :

1. Fair dealing is the fundamental and basic principle on which relations between employees and employers should rest.

2. The National Association of Manufacturers is not opposed to organizations of labor as such, but it is unalterably opposed to boycotts, blacklists, and other illegal acts of interference with the personal liberty of employer or employee.

3. No person should be refused employment or in any way discriminated against on account of membership or nonmembership in any labor organization, and there should be no discriminating against or interference with any employee who is not a member of a labor organization by members of such organizations.

4. With due regard to contracts, it is the right of the employee to leave his employment whenever he sees fit, and it is the right of the employer to discharge any employee when he sees fit.

5. Employers must be free to employ their work people at wages mutually satisfactory, without interference or dictation on the part of individuals or organizations not directly parties to such contracts.

6. Employers must be unmolested and unhampered in the management of their business, in determining the amount and quality of their product, and in the use of any methods or systems of pay which are just and equitable.

7. In the interest of employees and employers of the country, no limitation should be placed upon the opportunities of any person to learn any trade to which he or she may be adapted.

8. The National Association of Manufacturers disapproves absolutely of strikes and lock-outs, and favors an equitable adjustment of all differences between employers and employees by any amicable method that will preserve the rights of both parties.

9. Employees have the right to contract for their services in a collective capacity, but any contract that contains a stipulation that employment should be denied to men not parties to the contract is an invasion of the constitutional rights of the American workman, is against public policy, and is in violation of the conspiracy laws. This association declares its unalterable antagonism to the closed shop and insists that the doors of no industry be closed against American workmen because of their membership or nonmembership in any labor organization.

10. The National Association of Manufacturers pledges itself to oppose any and all legislation not in accord with the foregoing declaration.

#### APPENDIX B.—THE BASIC PRINCIPLES BEHIND GOOD EMPLOYEE RELATIONS AND SOUND COLLECTIVE BARGAINING (1946)

(A report by the industrial relations program committee of the National Association of Manufacturers, approved by the board of directors, December 3, 1946)

To develop sound and friendly relations with employees, to minimize the number and extent of industrial disputes, and to assure more and better goods at lower prices to more people, American employers should see that their policies encourage:

(a) High wages based on high productivity, with incentives to encourage superior performance and output;

(b) Working conditions that safeguard the health, dignity, and self-respect of the individual employee;

(c) Employment that is stabilized to as great a degree as possible, through intelligent direction of all the factors that are under management's control;

(d) A spirit of cooperation between employees and the management, through explanation to employees of the policies, problems, and prospects of the company.

The right of employees to join or not to join a union should be protected by law. In exercising the right to organize in unions or the right not to organize, employees should be protected by law against coercion from any source.

When the collective-bargaining relationship has been established, both employers and employees, quite aside from their legal obligations and rights, should work sincerely to make such bargaining effective. Collective bargaining should be free from the abuses which now destroy its benefits. It is believed that the abuses of collective bargaining will gradually disappear if both management and labor will adhere to the following principles:

1. The union as well as the employer should be obligated, by law, to bargain collectively in good faith, provided that a majority of the employees in the appropriate unit wish to be represented by the union.

2. The union as well as the employer should be obligated, by law, to adhere to the terms of collective-bargaining agreements. Collective-bargaining agreements should provide that disputes arising over the meaning or interpretation of a provision should be settled by peaceful procedures.

3. Monopolistic practices in restraint of trade are inherently contrary to the public interest, and should be prohibited to labor unions as well as to employers. It is just as contrary to the public interest for a union or unions representing the employees of two or more employers to take joint wage action or engage in other monopolistic practices as it is for two or more employers to take joint price action or engage in other monopolistic practices.

4. If a legitimate difference of opinion over wages, hours, or working conditions cannot be reconciled through collective bargaining or mediation, employees should be free to strike where such strike is not in violation of an existing agreement. However, the protection of law should be extended to strikers only when the majority of employees in the bargaining unit, by secret ballot under impartial supervision, have voted for a strike in preference to acceptance of the latest offer of the employer. Employees and employers should both be protected in their right to express their respective positions.

5. No strike should have the protection of law if it involves issues which do not relate to wages, hours, or working conditions, or demands which the employer is powerless to grant. Such issues and demands are involved in jurisdictional strikes, sympathy strikes, strikes against the Government, strikes to force employers to ignore or violate the law, strikes to force recognition of an uncertified union, strikes to enforce featherbedding or other work—restricted demands, or secondary boycotts.

6. No individual should be deprived of his right to work at an available job, nor should anybody be permitted to harm or injure the employee, or his family, or his property, at home, at work, or elsewhere. Mass picketing and any other form of coercion or intimidation should be prohibited.

7. Employers should not be required to bargain collectively with foremen or other representatives of management.

8. No employee or prospective employee should be required to join or to refrain from joining a union, or to maintain or withdraw his membership in a union, as a condition of employment. Compulsory union membership and interference with voluntary union membership both should be prohibited by law.

9. Biased laws and biased administration of laws have made a contribution to current difficulties, and should be replaced with impartial administration of improved laws primarily designed to advance the interests of the whole public while still safeguarding the rights of all employees. The preservation of free collective bargaining demands that Government intervention in labor disputes be reduced to an absolute minimum. The full extent of Government participation in labor disputes should be to make available competent and impartial conciliators.

Compulsory arbitration, in particular, is inconsistent with American ideals of individual freedom, and is bound to destroy genuine collective bargaining.

All labor and related legislation should be consistent with the principles set forth above. Any existing statutes that are in violation of such principles should be brought into accord with them through appropriate action by the Congress.

CLARENCE B. RANDALL.

*Chairman, Industrial Relations Program Committee.*

Senator DONNELL. I ask at this time that the witness be entitled to file such rejoinder as he wishes.

Senator MURRAY. It may be so filed.

(See supplemental statement.)

Senator HUMPHREY. I list the legislation from 1933 to 1941 that the NAM opposed by its own representatives to the Congress.

It opposed the Securities and Exchange Act; the Reciprocal Trade Agreements Act; the National Labor Relations Act; the Agricultural Price Parity Act; the Railroad Pension Act; the public works program; Social Security Act; emergency work relief; the Banking Act of 1935; the Guffey Coal Act; the Public Utility Holding Company Act; the Walsh-Healey Act; the Robinson-Patman Act that



made it possible for a few little-business men to survive, by the way.

Mr. MOSHER. Did it?

Senator HUMPHREY. Yes; I think it did.

The Anti-Strikebreaking Act. Senator Thomas, our chairman, knows about that. He was one of the coauthors of that act. The 1936 Revenue Act, which had the corporate tax section in it, the Guffey-Vinson Coal Contract Act; the Copeland Food and Drug Act; the Fair Labor Standards Act; the Executive Reorganization Act; the Agricultural Adjustment Act of 1938; the unallocated relief appropriations of that same year; Federal relief measures; Farm Security Administration; National Youth Administration; Public Works Administration; the undistributed-profits tax; the Trust Indentures Act; the National Guard Act; the Transportation Act of 1940; the Extension of Reciprocal Trade Agreements in 1940.

Senator MURRAY. Does it include the Full Employment Act of 1946?

Senator HUMPHREY. This was between the period of 1933 and 1941. That was the legislative period of peacetime activity of this Government, and it has nothing after that.

Mr. MOSHER. Mr. Chairman, may I be permitted to say something?

Senator MURRAY. You may.

Mr. MOSHER. I have listened to speeches and not questions. I cannot separate all the points that are being made.

Senator MURRAY. It is a difficult thing to do. That is the practice here. It has been engaged in by both sides.

I do not like it myself. I would like to have witnesses come here and testify. Every time a witness gets on the stand, a Senator takes hold of him and he puts into the record his views on the situation, and we have to recognize the Senators on both sides who have the same privilege.

Mr. MOSHER. I hope you do not think this witness has made any speeches yet. I have not made one yet.

Senator MURRAY. Well, you can make a pretty good speech. I have heard you make speeches before.

Mr. MOSHER. You might give me a little time, and I think I could answer the Senator from Florida and the Senator from Minnesota.

Senator PEPPER. You are certainly entitled to an opportunity to make a reply.

Senator MURRAY. I am in favor of free speech, and I want you to make any statement you wish.

Mr. MOSHER. These continual long lists of accusations, I just cannot remember all the points that were made. I am quite satisfied to stand on the record.

When we talk about manufacturers not contributing their full share to the war, I think it is just pure abuse of an individual witness, and I resent it very deeply.

Now, Senator Pepper made some references to profits and profiteering. I do not know of any manufacturer in this country in our group—yes, I know of certain individuals, as has been brought out in the record here in Washington, that did various things during the war. The record of the American corporations in this war cannot be surpassed by anybody.

Senator MURRAY. That is true of labor also, is it not?

Mr. MOSHER. Yes, sir.



Senator Pepper, I suggest, was not talking labor. He was condemning NAM in all his remarks, and that is what I deeply resent, because it is not true.

The very nature of your tax laws was such, the very pricing policies of your biggest corporations were such that there was no exorbitant profits and there are not any today. There are not profits enough in this country to maintain your economy, and if you want to maintain the economy of this country, the only way you will maintain it is by maintaining strong business, and it takes what you call profits, and I submit that what we call profits are not profits, as I can quote you company after company where our price policies are such that it is not in the picture.

Now, I cannot answer Senator Pepper. I am not going to try to. If I may, I will study the record when it comes out, and I will see that he gets an adequate answer to every comment that he has made.

Senator DONNELL. You will send that to the committee and it may go into the record. May it not, Mr. Chairman?

Senator MURRAY. It may go into the record.

Mr. MOSHER. As to the other points, this article in the Harvard Review was written for a given purpose. It took a period of history and completely skipped another period of history.

Senator HUMPHREY. What period was that, Mr. Mosher?

Mr. MOSHER. You said it took it up to 1941. That was the peacetime period. That was not the idea of the article.

It was to show what purports to be shown and then did not come back with anything. The only one that was mentioned that I can personally subscribe to is NAM's attack on the full employment bill.

Senator HUMPHREY. Sir, all I was doing was listing out the articles of legislation, which, according to this document, NAM opposed. If you can disprove this, I will be glad to have you disprove it.

Mr. MOSHER. I will check it. I cannot tell you from memory.

Senator HUMPHREY. Your statement precipitated a question, Mr. Mosher, because you said that NAM had been primarily interested only in articles or legislation that affected manufacturers, and when the distinguished Senator from Florida asked you a few questions about price supports, farm price supports, you said "that does not concern us."

Mr. MOSHER. I rest on my statement.

Senator HUMPHREY. I rest on my statement.

Mr. MOSHER. We will let the facts prove it.

Senator PEPPER. Mr. Chairman, in order that Mr. Mosher might have a full opportunity to let the record speak the truth, suppose we allow his statement, or invite his statement, that will indicate, beginning in 1933 with the Roosevelt administration and continuing down to date, the bills or measures you appeared here and advocated in one column, and in the other column the measures you opposed, and you make up the record so it will speak the truth.

Mr. MOSHER. Mr. Chairman, may I make one comment?

You mentioned before, one bill in which I had personal experience.

Senator MURRAY. Which bill is that?

Mr. MOSHER. Full employment bill.

Senator MURRAY. I did not mention you in connection with it.

Mr. MOSHER. You said NAM. You mentioned a bill, and it happens to be the only one of the lot in which I had personal experience.

I suppose you gentlemen would say I opposed the full employment bill. I submit to you that NAM came in here to Washington with a program on which we had spent a couple of years, more or less, that was a complete program to cover your objective. Now, is that opposing full employment? We did not oppose full employment.

Now, I am speaking from my own personal knowledge because I carried that story all over the country, and I did all the testifying for NAM in connection with that bill. We did not oppose full employment in any sense of the word.

All we did, so far as the proposal was concerned, was to point out that it was completely and wholly unworkable, and to submit a plan, a program which we thought was better designed to accomplish the result that we all want, namely, a good economy.

Now, if you call that opposing a social-welfare bill—I do not know what the record says. I suppose the record will go this way.

Senator MURRAY. I did not say anything about your opposition to the bill. I remember that you appeared before the committee and that you opposed it in its original form, and I think that the bill as finally reported and enacted was substantially the bill that was intended when it was originally proposed. There were some changes in it. Instead of using the words "full employment," they used "maximum employment," and there were some other changes in it. I do not know whether they improved the bill or not.

Mr. MOSHER. Well, the bill, as it came out, provided for certain committees and certain reports, and that sort of thing. It did not provide for laying on the line the expenditure of huge sums of Government money which could have been as much as three or four or five hundred billions of dollars as the thing was originally conceived.

Senator MURRAY. Of course, in a dangerous depression that may happen yet.

Mr. MOSHER. It may happen again, yes. We hope not.

Senator MURRAY. I hope not, too.

Mr. MOSHER. All I am pointing out, Senator—you happen to add to the list of bills which NAM is on the record as having opposed—you happened to mention yourself the full-employment bill, and I submit to you that we did not oppose the full-employment bill. I submit that we came in with a plan and program designed to accomplish your objective, when the things that were in the bill would never have even started down that route.

Senator MURRAY. The committee has access to the hearings there and to the entire record.

Mr. MOSHER. I just want to add this, if I may. If what we did in full employment constitutes opposition, why then everything that arises—

Senator DONNELL. Mr. Chairman, may I inquire, is it contemplated to ask Mr. Mosher to come back this afternoon?

Senator MURRAY. I think not. Do you wish to ask any questions?

Senator DOUGLAS. No.

Senator MURRAY. Do you wish to ask any questions?

Senator HILL. No.

Senator DONNELL. Mr. Chairman, if I might be pardoned just a moment, Mr. Mosher stated there was no such thing as a cost-plus contract during the war. I think the testimony probably indicates there was cost plus a fixed fee.

Mr. MOSHER. Yes; the inference was the manufacturer could go on what we used to call the old cost-plus percentage where you made more money as you spent more money. We did not have that type of contract.

Senator DONNELL. And in the second place, you were appointed by the President of the United States, by President Truman, as the member of the President's Labor-Management Conference in November 1945. Is that correct?

Mr. MOSHER. Yes, sir.

Senator PEPPER. Mr. Chairman, while Mr. Mosher is addressing himself to some of the other La Follette committee conclusions presented in the statement by Senator Murray, may I ask him to address himself to the accuracy of these facts. This is also one of the findings of the La Follette committee.

Of the 125 companies that appeared on the board of directors of the NAM at sometime during the years 1933 to 1937, 14 used detective-agency services, 6 purchased industrial munitions, and 14 had both at sometime during the period.

Of the 262 companies and subsidiaries which contributed 50 percent of the income of the association during the period 1933 to 1937, 58 companies used labor espionage services, 16 purchased industrial munitions, and 31 others had both at sometime during 1933 to 1936.

The companies among the large contributors that purchased industrial munitions accounted for \$335,000 worth, or 61 percent of the amount sold to industrial concerns in the United States from January 1933 to July 1937.

If you have any facts bearing on that—

Mr. MOSHER. The answer to that would be to go back and tell the facts surrounding many of those cases which the La Follette committee quite effectively omitted, for a well-understood purpose.

Senator MURRAY. Does any member of the committee desire to have the witness return?

(No response.)

Senator MURRAY. Thank you, Mr. Mosher.

Senator DONNELL. Thank you very much, Mr. Mosher.

Senator MURRAY. The meeting will adjourn, and we will meet here at 2:30 this afternoon.

(Whereupon, at 12:45 p. m., a recess was taken until 2:30 p. m., of this same day.)

(Mr. Mosher submitted the following prepared statement:)

STATEMENT OF IRA MOSHER, CHAIRMAN, FINANCE COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

My name is Ira Mosher. I am chairman of the finance committee, a director and a member of the executive committee on the National Association of Manufacturers. The NAM has more than 15,000 member companies and 83 percent of them are small- and medium-sized businesses with fewer than 500 employees.

Thank you for this chance to appear before the committee. You have been patient with me in past appearances and I sincerely want to give you anything that I can in the way of information, opinion, and recommendations that may help you in the consideration of legislation to carry on the progress we have made in the last 2 years toward achieving labor peace and better labor relations in this country.

Promotion of labor peace is terribly important at this particular time. While the economy is going through a period of readjustment, it would be foolhardy to allow politics to dictate a labor policy which could seriously intensify labor strife and upset orderly economic adjustments. The public good must be the yardstick we apply to all proposals bearing on the relations between labor and management.

As far as I am concerned, there is nothing sacred about the Taft-Hartley Act, and it is not my intention to try and defend that act as such. Critics of the



Taft-Hartley Act, however, have been eminently successful in their efforts to make the name a symbol of labor's crucifixion, and the enormity of this fraud is reflected in the black-and-white record of labor's gains in members, financial strength, and influence during the administration of the act. Where is the evidence of hardship or unfairness? I have looked for it. I have asked my friends in labor. I have not been able to learn how the Taft-Hartley Act has hurt labor. Nevertheless, it is now seriously proposed that this law be scrapped and the Wagner Act reinstated.

An unstable national labor policy is not going to stabilize labor-management relations and bring labor peace to this country. Before we decide to change that policy the reasons should be definite, convincing, and conclusive. Again I say that labor peace is so necessary to the welfare of our country that it must be kept out of politics.

The heavy contributions of L.-M. R. A. to labor peace are recounted in detail in the joint committee report. The figures show a marked decline in the number of strikes and the number of man-days idle since passage of the act. Labor unions gained more than 500,000 members and the annual revenue of organized labor rose to a record \$500,000,000 in the first year L.-M. R. A. was in effect, according to factory management and maintenance. Figures supplied by unions and the Department of Labor to the National Industrial Conference Board indicate a record union membership of 16,210,000 in 1948.

Labor predictions that L.-M. R. A. would destroy unions have not materialized. Unions have gained, collective bargaining has gone ahead, and the public has profited with the decline in industrial disputes and work stoppages.

That is a picture of progress and it has developed in the comparatively few months we have lived under L.-M. R. A. I see nothing in that picture to justify scrapping L.-M. R. A. and throwing labor-management relations back to the conditions of uncertainty and inequality responsible for the most prolonged and bitter industrial warfare in our history. The betterment of labor-management relations is reflected in the 100,000 or more collective-bargaining contracts being negotiated annually. It is reflected in the statement of Assistant Secretary of Labor John W. Gibson, who said only 2 months ago, "Work stoppages are the exception, not the rule, in labor-management relations \* \* \* what the public does not read in the newspapers is that most collective-bargaining negotiations over a new or revised contract are settled in a peaceful manner and an attitude of cooperation."

With concrete evidence of collective bargaining growing to these proportions, I find it hard to understand the provocation for this bitter assault on our national labor policy.

The bill under consideration (S. 249) would repeal the Labor-Management Relations Act of 1947 and reinstate the Wagner Act with certain minor amendments. You cannot fail to see that under such a law employees and the general public, as well as employers, lose the protection against abusive union practices that they have enjoyed for the last 19 [20] months.

These abusive practices are not imaginary. They are written on the record in hundreds of thousands of words of testimony before Congress. They are the basis of the corrective measures which Congress wrote into the Labor-Management Relations Act. The success of the act in curbing these abusive practices without injury to the legitimate rights of organized labor is real, and the evidence is written in 18 months of operation under provisions of L. M. R. A.

As I have already pointed out, it is not my intention to defend L. M. R. A. as such. However, I do wish to list some of the principal provisions of that law, originally included because of need and experience, but which would be eliminated by the bill before this committee. They are:

1. *Union duty to bargain.*—Not a statutory requirement as in L. M. R. A. Restores Wagner Act provision requiring good faith bargaining by employers only.
2. *Free speech.*—Statutory protection of employer's right eliminated by S. 249, which restores Wagner Act conditions giving NLRB discretion to decide what employer communications "privileged" or "unfair."
3. *Foremen.*—Would again be "employees" under the law, compelling employers to bargain with own management representatives.
4. *Compulsory union membership.*—L. M. R. A. ban on closed shop with union shop permitted after majority vote of all employees in unit would be eliminated. Administration bill would permit closed shop and specifically invalidate State laws which regulate or prohibit.
5. *Jurisdictional strikes.*—Board-sought injunctions against jurisdictional strikes not permitted as under L. M. R. A. Bill would give Board or an arbitrator



authority to finally settle such disputes and make it unfair labor practice for employers or unions not to abide by awards.

6. *Secondary boycotts.*—L. M. R. A. made most secondary boycotts unfair labor practices and subject to injunctions sought by NLRB. Persons injured by boycotts could sue for damages. S. 249 eliminates protection against all such boycotts except those in furtherance of jurisdictional disputes and limits remedy to unfair-labor-practice proceeding.

7. *Union contract responsibility.*—L. M. R. A. provision making unions suable in Federal courts and responsible for contract violations eliminated.

8. *Union political contributions.*—Outlawed by L. M. R. A. to same extent as those of corporations. S. 249 prohibit corporation contributions only.

9. *National emergency strikes.*—L. M. R. A. permitted Government to enjoin for 80 days after Board of Inquiry report. S. 249 eliminates injunction remedy and provides for "fact-finding" board and "recommendations" only.

10. *Mediation and Conciliation Service.*—Made an independent agency of Government by L. M. R. A.; would be restored to Labor Department as division thereof.

11. *Union health and welfare funds.*—L. M. R. A. regulated such funds and permitted employer payments to them only if made to jointly managed trust fund. S. 249 has no safeguards, but employers would be compelled to bargain on subject.

12. *Employee's right to refrain from concerted activity.*—Specifically protected by L. M. R. A. S. 249 restores Wagner Act conditions permitting unions to threaten, coerce, or intimidate employees into joining in concerted activities.

13. *Union financial reports.*—L. M. R. A. required as prerequisite to utilizing NLRB processes. Eliminated by S. 249.

14. *Union officers' non-Communist affidavits.*—Requirement by L. M. R. A. as prerequisite to use of NLRB facilities eliminated by S. 249.

15. *Decertification petitions.*—L. M. R. A. section permitting employees to petition for decertification if union believed no longer to represent majority eliminated by S. 249.

16. *Run-off elections.*—If no majority, L. M. R. A. requires run-off election between two highest even if "no union" vote is one. S. 249 has no such provision. Board rules under Wagner Act eliminated "no union" in such contests.

17. *Employer petitions to NLRB.*—L. M. R. A. provision permitting employer petitions for election if one or more unions want bargaining rights eliminated by S. 249. Board rules under Wagner Act permitted petition only if two or more unions involved.

18. *Separation of Board functions.*—Investigating and prosecuting functions of NLRB separated from judicial in L. M. R. A. by establishing independent office of general counsel. S. 249 restores Wagner Act conditions by revesting prosecuting and judicial functions in Board.

19. *Limitation on complaints.*—L. M. R. A. provides no complaint may issue on charges filed more than 6 months after occurrence of unfair act. S. 249, like Wagner Act, has no such limitation.

20. *Board orders.*—L. M. R. A. provides Board orders are conclusive as to fact only if supported by "substantial evidence on the record considered as a whole." S. 249 restores Wagner Act provision making them conclusive if supported by "evidence."

21. *Professional employees.*—L. M. R. A. defines and excludes professionals from bargaining unit unless a majority voted for inclusion. S. 249 has no such provision.

22. *Votes of strikers.*—L. M. R. A. prevents strikers from voting unless entitled to reinstatement. S. 249 restores Wagner Act conditions permitting strikers and replacements to vote in representation elections.

23. *Check-off.*—L. M. R. A. permits if authorized in writing by individual employee and not irrevocable for more than 1 year. S. 249 has no such provision and in addition forbids State laws from regulating.

24. *Strikes by Government employees.*—L. M. R. A. prohibits such strikes. S. 249 eliminates the prohibition.

25. *Featherbedding practices.*—L. M. R. A. makes "unfair" pay demands for work not performed or not to be performed. S. 249 has no such provision.

Other provisions of the Taft-Hartley Act which would be eliminated if the administration bill is enacted as it was introduced include the following: (1) Board-sought injunctions to maintain the status quo pending its decision of unfair labor practice charges; (2) specific protection of the right of individual employees to present grievances to their employer without union intervention; (3) greater protection for craft units and craft bargaining; (4) provision for independent plant-guard unions unaffiliated with rank and file employee's unions; (5) provision for equal treatment of undominated independent unions; (6) protection of union-shop employees from payment of excessive union initiation fees;

(7) provisions for more adequate court review of Board orders and that Federal court rules of evidence shall apply in Board proceedings "so far as practicable"; (8) protection of right of employers to select their own bargaining representatives; and (9) specific protection of employer's right to discharge for cause.

It is my hope that this break-down will bring home the full impact of how S. 249 will reverse our national labor policy if it is enacted into law by Congress. With L. M. R. A.'s accomplishments so clear on the record, it is an incredible thing that Congress can be pressured to the point of seriously considering such a backward step as contemplated by the administration bill.

Through the years the National Association of Manufacturers has developed certain principles which we feel form the only true, dependable basis for industrial peace in this country. It is a policy devoted first to the public interest. It is a policy based on true collective bargaining and equality before the law. The principles of this policy are:

First. The principle of equality between labor and management with respect to their obligations and responsibilities under law: The importance of a general feeling on the part of both employers and employees of a basic equality before the law cannot be too strongly emphasized. If there is to be mutual respect and confidence in labor-management relations, there must be clear recognition and acceptance on the part of each that the national labor policy maintains a true balance in their rights, responsibilities, and obligations under law.

If there is to be a legal obligation on the part of employers to bargain collectively in good faith, this obligation should apply equally to organized labor. Any national labor policy which imposes the obligation to bargain on only one of the parties is violating the basic principle of equity and jeopardizing the whole process of collective bargaining as a basis for adjustment of industrial disputes by peaceful means.

Labor leaders do not quarrel with the principle here involved. Their quarrel is with the method Congress adopted to try and make this quality a reality. They have offered no substitute, however, except a return to the Wagner Act which imposed upon them no obligation whatever.

Labor does not deny that good-faith bargaining by both sides is a necessary first step toward harmonious industrial relations. Yet they are unwilling to be bound by the same statutory requirements they would require of employers. Despite a long record of industrial disputes—some national in scope—caused solely by union demands presented on a "take it or else" basis they would have you eliminate even this modest requirement. Genuine collective bargaining is getting to be something of a fiction under the Wagner Act where it could be conducted only at the pleasure of a union and then only on the terms offered.

A similar problem exists regarding the binding nature of collective-bargaining contracts. Charges have been made that liability of unions for violation of collective-bargaining contracts would open the way to court action and law suits on the part of employers to crush unions. This accusation is in no way supported by experience under the present law. There is no evidence in the record that this provision has been used by employers as an antiunion device. During the time this principle has been a part of national labor policy, there is record of only 37 suits having been lodged against unions and only 19 cases where suits have been processed against employers. In no instance so far has judgment for damages been rendered against either party. In most cases the suits have been dismissed after a settlement by mutual agreement or the conclusion of a strike. The very fact that this remedy is available has been a stimulus to and an encouragement of a deepened sense of responsibility on the part of both unions and employers. It has steadied and supported the efforts of union leaders seeking to achieve higher standards of accountability and responsibility in their own unions. This principle of equality of obligation as to responsibility for observance of collective-bargaining contracts is essential to the success of any national labor policy.

The chief argument against the Taft-Hartley provision making unions responsible for contract commitments was that it was unnecessary since they were already responsible under State laws wherever they operated. Strangely enough, one of the first developments after the Taft-Hartley law became effective was for unions to demand contract clauses designed to nullify this statutory provision. The inconsistency here is obvious. Yet with no justification whatever union spokesmen are demanding that you reestablish their freedom from contract responsibility as it existed under the Wagner Act. I urge the Congress to consider this demand carefully in the light of the record. There can be no doubt as to the answer if "equality under law" is to be genuinely accepted.

This principle of equality under law applies with equal force to most of the unfair labor practices defined under national labor policy. If it is an unfair

labor practice for an employer to intimidate or coerce employees with respect to their union relations and activities, it should be equally unlawful for a union to exercise coercion or intimidation. If it is contrary to national labor policy for an employer to discriminate against workers with respect to terms or conditions of employment, it should be equally unlawful for a labor union to coerce or intimidate workers by expulsion from the union, or threats against or violence to his person, members of family, or property.

Union spokesmen make no defense of nor in so many words ask the right to intimidate or coerce employees to join a union or engage in union activities; to discriminate against workers by expulsion from a union for any reason they deem sufficient; to engage in violence, threats, or intimidation against the person, family or property of noncooperating employees. As a matter of principle they will stand four-square against any such practices and agree that such things shouldn't be permitted to occur. They did occur all too frequently under the Wagner Act. Notwithstanding, however, these same spokesmen oppose even the modest provisions of the Taft-Hartley Act, making intimidation and coercion an unfair labor practice. Any national labor policy which fails to carry out and implement this fundamental principle of equality jeopardizes the success of that policy and undermines its effectiveness in terms of bringing about industrial peace.

Second. As a matter of principle, there should be no compulsion with respect to membership or nonmembership in a labor organization: As a matter of public policy, individual employees should be free in their decisions as to membership or nonmembership in their unions and with respect to their union activities. There is ample experience to show that this is the only basis on which there can be a democratic and responsible labor movement in this country. In addition, there is overwhelming evidence that the closed shop together with all other forms of compulsory union membership is a major device for the coercion and intimidation of individual union members by their own unions.

Union leaders insist that the closed shop is necessary to enable them to maintain discipline among the members and to leave them free to improve worker morale, handle grievances, assist in stepping up production, and all the many other functions normally associated with trade-unionism. Unfortunately the record does not show improved discipline, worker morale, or increased production. Assurance of full compulsory union membership has too frequently led to a break-down of plant discipline and loss to the employer of control of work force and work schedules.

In considering the question of regulating the closed or union shop the Congress should remember it is the worker's job which is at stake. The Taft-Hartley Act provided that inclusion or exclusion of a union-shop clause in a collectively bargained contract should be a matter of self-determination by the workers who actually had the most to gain or lose. It was considered a matter of such great importance that management and labor should not be free to make a deal requiring membership in a union as a condition of employment without the worker's consent.

The pages of your hearing records are full of examples showing how the old Wagner Act provision operated to foreclose many of the legitimate rights of individual workers. I urge the Congress to consider this question most carefully before reverting to a system which for all practical purposes made workers completely subservient to the uncontrolled dictates of powerful unions and their leaders.

At various times during these hearings, the suggestion has been made that possibly the closed shop could be legalized if its more serious abuses could be abolished; that is, provided certain restrictions or regulations could be established, safeguarding the freedoms of the employer to hire and affording the individual worker adequate protection with respect to access to and retention of his job.

I have given this whole matter of whether it is possible to regulate or control the closed shop most careful study. I am convinced that adequate provision for the elimination of unwarranted restrictions for admittance to the union and for necessary freedom of the employer in the selection of workers would, of themselves, make impossible the closed shop as we now know it. I am furthermore convinced that adequate regulations or provisions safeguarding the individual employees and employers against the known abuses of this form of union membership would involve such a degree of regimentation and dictation of the internal affairs of labor organizations as to be wholly impractical and probably entirely unacceptable to organized labor. The whole matter comes down to this—that the closed shop is an assignment of monopoly over work opportunity which



is contrary to democratic principles, contrary to the public interest, and, as a matter of public policy, should not be permitted either to the employer or a labor union.

The bill now before this committee would go much further than the professed desire to reenact the Wagner Act of 1935.

The Wagner Act, in its closed-shop proviso, left to the States their traditional power to legislate with respect to the predominately local activities of their citizens. The Taft-Hartley Act, in order to avoid any possible doubt, expressly stated that this traditional power of the several States was to remain undisturbed by any actual or presumed exercise of the Federal power over commerce.

S. 249, on the other hand, proposes to have Congress say that the citizens of the sovereign States are to be denied their right to decide whether or not they wish to protect themselves against the abuses and discrimination inherent in the closed shop. Instead of leaving the power in the hands of the people of each State, this bill would delegate to each employer the power to decide whether there can or should be a closed-shop agreement.

If this proposal is enacted into law, this Congress will nullify the laws of some 16 (one-third) of the States in the Union. Under the guise of regulating commerce, the sponsors of this measure propose not only to blot out the public policy adopted by the one-third of the citizens who have expressed themselves on this specific issue, but also to disenfranchise the entire populations of each of the 48 States on this question.

The enormity of this proposal is apparent when it is realized that several of the States which have prohibited the closed shop within their boundaries have done so through constitutional amendments ratified by the citizens in a referendum on the precise issue.

Third, industry-wide bargaining is contrary to successful collective bargaining and the public interest: As a matter of sound principle as well as practice, collective bargaining functions best when carried on at the plant or company level. The growing trend of industry-wide bargaining on a national scale is primarily responsible for the Nation's most critical national emergencies and the threat of increased Government intervention.

Much has been heard in these hearings about the necessity for legislation to meet national emergencies in labor relations. We have heard claims of inherent powers residing in the Chief Executive. We have heard arguments pro and con against injunctions. We have heard proposals for Government seizure of plants and properties. These are but superficial aspects of this whole problem of protection of the public interest in widespread industrial strife. Practically without exception the instances in which the Nation has been confronted with these emergencies have been those involving various degrees of industry-wide bargaining. The basic solution to this problem is not to invest the Government with more autocratic power over labor and management, but to attack the problem at the source by regulating the practice of collective bargaining on a national industry-wide basis.

Such a shortcoming in national labor policy not only jeopardizes the cause of sound collective bargaining, but opens the way for Government intervention on an ever-increasing scale in the form of injunction, compulsory arbitration, and even Government seizure of private property.

Much has been said in criticism of the injunction features of the present law as used in emergency cases. It is alleged that the injunction settles nothing, and may encourage the suspension of bargaining and allow a new heating-up period.

S. 249 seeks to deal with this problem by use of fact-finding panels or boards, a procedure which not only fails to settle anything, but also which, judging from my experience with ad hoc boards, is even more destructive of bargaining than provisions of existing law. More important, is this Congress willing to delegate to the unlimited discretion of a temporary board the power to determine the vital economic issues which may be involved in these national emergency cases.

My opinion is that the present law has worked reasonably well. Its weakness may be due largely to the fact that the injunction is for a definite period, thus permitting the parties to gage the "profit and loss" involved if agreement is not reached within the 80-day period. Instead of scrapping the injunction, therefore, I would recommend that the courts, upon recommendation of the Government, be authorized to extend the life of the injunction so long as public health and safety may require.

I am not wedded to the injunction, but my suggestion is based on two observations: First, I have seen little, if any, evidence that Congress is willing to deal with the root of the problem, namely, the monopolistic nature of national, industry-wide collective bargaining, and, second, no other proposal has been advanced,



which based upon experience, can be anywhere near as effective as provisions of existing law.

Fourth. Abuses of economic power (certain strikes and secondary boycotts) should be curbed as matter of national labor policy: The right to strike is a perfectly normal and legitimate function of the collective-bargaining process. But as a matter of principle it should be exercised subject to the overriding and paramount interests of the public. This means that in the interests of the public, certain well-recognized and defined abuses of this right should be forbidden as a matter of sound national labor policy. The protection of law should not be extended to strikes called to compel an employer to grant demands which in themselves are in violation of law. There can be no justification for the use of the strike to enforce jurisdictional demands, to enforce secondary boycotts, to carry on sympathy strikes, to engage in economic conflict with the Government.

There can be no justification in national labor policy for sanctioning the use of strikes in organizational drives or to force union recognition. Government agencies are provided for peaceful settlement of such disputes. Neither industry nor the public should bear the losses resulting from industrial disputes for these purposes.

During the past year, strikes to compel employers to make concessions which in themselves constitute unfair labor practices or subject the employer to criminal liabilities have been on the increase. A sound national labor policy must deal frankly and firmly with abuses of this character.

One of the most conspicuous abuses of power on the part of organized labor is use of the secondary boycott. The utilization of secondary boycotts, together with closed-shop and industry-wide agreements in basic industries, permitted the exercise of vast monopolistic power by unions.

The joint committee labor-management relations report briefly describes 29 cases involving various illegal forms of the secondary boycott by unions.

Nineteen, or 65 percent, of these were cases where unions engaged in secondary boycotts to prevent one employer from doing business with others; and although this type of boycott represented the majority, the underlying purposes of the unions were directed to a variety of objectives.

These objectives included:

1. Boycotts to force an employer to recognize an uncertified union.
2. Boycotts to compel employers to give work to members of a particular union.
3. Boycotts to compel employers to recognize closed shop union as bargaining agent for employees prior to their employment.
4. Boycott to compel employers to employ members of a particular union.
5. Boycotts in dispute over terms of employment.
6. Boycotts to compel employers to pay for work not performed.

With one unimportant exception, the Administration bill, S. 249, would open the door for the unions to promptly return to the unrestrained use of secondary boycotts. This exception would prohibit unions from engaging in secondary boycotts only when the purpose would be to compel an employer to deal with a particular union if another is certified or recognized or where the purpose would be to compel an employer to assign country to Board award.

Orderly collective bargaining with properly certified unions was immeasurably advanced by the Labor-Management Relations Act which outlawed this device when used by unions for the purposes set forth above.

The effectiveness of this change in bringing about better collective bargaining is shown by the report of the Joint Committee on Labor-Management Relations of the Congress which states in part:

'The mere filing of a charge and the beginning of an investigation is serving to stop the secondary boycotts.'

Thus, it is evident that the process of collective bargaining which is the cornerstone of our national labor policy has been largely freed from obstructions in the form of secondary boycotts.

Fifth. Freedom of speech as between employers and employees is a basic principle of sound industrial relations: Under existing labor policy, the right of natural and normal exchange of information between employers and employees has been materially clarified and strengthened. This has contributed to a very definite improvement in two-way employer-employee communication and mutual understanding. This basic principle must be clearly defined and safeguarded in a sound national labor policy.

With the exception of spokesmen for the CIO, I believe most labor-union leaders are willing to concede that employers should have their right of free speech protected to the same extent that right is protected for other citizens.

Mr. William Green, president of the American Federation of Labor, testified before the House Labor Committee in 1947 (p. 1671, House hearings), as follows:

"\* \* \* I am willing that the Wagner Labor Act be amended so that an employer may engage in free speech, just as anybody else."

It is generally recognized that this right was not protected under the Wagner Act and that Board decisions thereunder in fact unfairly circumscribed that right. The administration's proposal, without justification or rationalization of any sort, seeks a return to that era when unions, their officers, and agents were the only ones permitted full exercise of their first-amendment right of free speech.

Sixth. Unbiased and impartial administration of laws is basic to any successful national labor policy: The application of this principle is of particular importance with respect to the administration of such agencies as the Federal Conciliation and Mediation Service and the National Labor Relations Board.

In asking that the Conciliation Service be placed under the Department of Labor, the Secretary of Labor, in his testimony before this committee, relied heavily on the action of the employer delegates to the President's Labor-Management Conference of 1945, agreeing that the Conciliation Service should remain in the Department of Labor. As a cochairman of that conference and as one familiar with the discussions and views of the management group, I would like to make it clear that this agreement was strictly a compromise and in no way represents the opinion of employers, then or now.

The subject of the Conciliation Service was assigned to Committee No. 4. Management's proposals as dealing specifically with the independence of the Conciliation Service are recorded as follows in the official minutes of the employer delegates meeting:

"To assure impartiality, the United States Conciliation Service should be an independent agency. As a part of the Department of Labor it does not assure impartiality.

"The purpose of the Labor Department as stated by law is 'to foster, promote, and develop the welfare of the wage earners.' The Service belongs no more in the Department of Labor than in the Department of Commerce."

At an industry delegates meeting on the evening of November 14, 1945, Mr. William Rand reported for committee 4 that "one exception to the general agreement is the question of the independent status of the Conciliation Service since labor unanimously opposed its removal from the Department of Labor." Mr. Rieve set forth the compromise proposal that "The personnel of the Conciliation Service be selected jointly by the Secretary of Commerce and the Secretary of Labor, with the advice of labor groups and industry groups, respectively." At a following meeting of the industry group, Mr. Rand reported for committee 4 as follows:

"The only question remaining was should management members agree to allow Conciliation Service to remain in the Department of Labor, providing that the Conciliation Service would be autonomous and providing that management and labor advisers to the Conciliation Director would be appointed to help select (or determine rules for the selection of) Conciliation Service personnel. \* \* \*

Mr. Rand stated that the entire management group of his committee endorsed and recommended this as the best possible compromise for assuring an impartial Conciliation Service.

Finally, on November 19, the official minutes of the industry group recorded the following action on the report of committee 4:

"Although industry originally urged that the Conciliation Service should be established as an independent agency, it was considered that the final report of the committee establishes sufficient safeguards for achieving impartiality and the industry group as a whole agreed to withdraw its demands that the Conciliation Service be made an independent agency."

As things developed, the provisions which labor had proposed to safeguard the impartiality of the conciliation service under the Department of Labor did not materialize and, in the end, in the interests of securing some measure of agreement, management was faced with the necessity of giving way on this demand. At a final meeting of the management group of November 29, I am on record as having reported:

"We made important concessions in every one of the reports on which agreement has been reached. We gave way completely in the report of committee 4."

I cannot emphasize too strongly that this agreement on the matter of the Conciliation Service was a compromise made as a matter of expediency and in no way represented the considered judgment of the management group of the President's labor-management conference.

In the light of the facts as set forth in the official minutes of the employer group at the conference, I cannot see how the agreement reached under these cir-

cumstances can be used to support the statement that the employer group favored the retention of the United States Conciliation Service in the Department of Labor.

It is important further that for the benefit of this committee I clear up a misunderstanding of my own position on the subject of an independent Conciliation Service. In his testimony before this committee, the Secretary of Labor made it appear that in my testimony before you 2 years ago, I had personally supported the retention of the Conciliation Service in the Department of Labor. The facts are that in my testimony before this committee in February 1947, I did not discuss the point that the Conciliation Service should remain in or be eliminated from the Department of Labor. I did stress employers' interest in a strong, impartial, and competent Conciliation Service and their hope that this could be developed. In the light of experience of employers with the United States Conciliation and Mediation Service since its establishment as an independent agency, there is, I believe, general agreement among employers that it is now operated in a truly independent, impartial manner and has made an altogether new and unprecedented contribution toward industrial peace and labor-management relations.

During this same period, it has likewise become clear that the United States Department of Labor has become an exponent and supporter of organized labor. While this may be a valid objective, it certainly does not qualify it as an agency of the Government to be entrusted with the delicate functions of conciliation and mediation. Should the Conciliation Service be returned to the United States Department of Labor, I do not see how industry could have any confidence in its impartial administration, and if this is done, I fear that its usefulness as an agency of industrial peace will be seriously undermined if not eventually ended.

For the same general reasons, the separation of the prosecuting and judicial functions of the National Labor Relations Board is essential if confidence is to be maintained in the impartiality and fairness of this important national agency.

Failure of the old Wagner Act was due not so much to its basic provisions as to the biased and unfair manner in which they were administered. This bias was clearly evident not only as between employers and unions, but as between unions themselves. Whatever may be finally approved by way of national labor legislation, it is vitally important that it incorporate and effectively implement procedures conducive to impartial administration.

It is only necessary to mention the evidence and testimony developed by a House committee in 1939-40 investigating the operations of the NLRB to recall the conclusive evidence of biased, one-sided administration of the Wagner Act. Large segments of organized labor itself bitterly assailed the conditions there brought to light and supported legislative amendments designed to correct in a limited measure some of the Wagner Act's major shortcomings.

There is nothing in the present administration proposal to forestall a return to that unhappy era which I submit was something short of "industrial peace" or fair administration.

The separation of functions achieved in the Taft-Hartley Act has tended to remove one of the most obvious features of the old law which destroyed confidence in the Board as an impartial agency of Government. It is likewise in recognition of a long-considered policy, now established by the Administrative Procedure Act, that the investigating, prosecuting, and judicial functions of administrative agencies should not be under the same direction and control.

There is nothing in the record of operations under the Taft-Hartley Act which supports any argument for a return to the discredited procedures followed under the Wagner Act.

Seventh. Encouragement of settlement of industrial disputes by voluntary and peaceful means is an objective of national labor policy: Compulsory arbitration is inconsistent with American ideals of individual freedom and in the end is bound to destroy genuine collective bargaining. There can be no justification for inclusion in national labor policy of compulsory arbitration, however described, as the basis for the settlement of disputes over making of new contracts. So much progress has been made by employers in the acceptance of voluntary arbitration as a medium for the adjustment of disputes arising under terms of existing contracts, that to make this mandatory would be a step backward and a serious blow to the cause of collective bargaining.

Experience, particularly during wartime, has given ample evidence that compulsory arbitration not only nullifies genuine collective bargaining, but leads eventually to increasing degrees of government intervention.



The provisions for handling jurisdictional disputes in S. 249 may be a first step toward compulsory arbitration. The Board or a Board-appointed arbitrator is to be clothed with authority finally to settle such disputes. To disregard such a settlement order becomes an unfair labor practice. Wholly aside from the fact that this is a slow and cumbersome procedure to correct an injury which is frequently immediate and devastating, it is totally inadequate as a protection of the right of employers to make their own work assignments and maintain plant efficiency.

The Taft-Hartley Act avoided this by recognizing that jurisdictional strikes are absolutely unjustified. It, therefore, made a strike in furtherance of a jurisdictional dispute the unfair labor practice. It gave the Board no authority whatever to make a final order awarding work to one union or another.

In practice these provisions worked very well and the record shows that jurisdictional disputes have all but disappeared as a result. In the face of such a record only compelling and urgent reasons should dictate a change. None have as yet been presented and I suggest that until they are, the Congress should take no such backward step.

Eighth. Collective bargaining should be engaged in and protected solely as a process between management and representatives of rank and file employees: In accordance with this principle, no national labor policy should subject an employer to the legal obligation to bargain with representatives of his own management group. A contrary policy is destructive of the fundamental integrity of management and disruptive of the collective bargaining process itself.

The question of unionization of foremen was one of the most fruitful sources of labor disputes under the Wagner Act. As indicated earlier the Board has gone both ways on the matter at one time holding them not to be protected "employees" and later that they were within the protection of the act.

The Taft-Hartley Act settled the question by statute and disputes over this issue have likewise all but disappeared. Union spokesmen have made no case nor can they make a case for a return to the uncertainty, confusion, and turmoil of the Wagner Act provisions.

Even Mr. William Green of the AFL testified in 1946 that a line should be drawn between management personnel and rank and file union members. His only disagreement was over where that line was drawn. Without arguing the precise location of the line of demarcation, I submit that the principle here is sound and the Congress should be slow to eliminate a provision which has clearly worked in the interest of industrial peace.

Ninth. Sound national labor policy as a matter of principle will afford adequate protection for the individual worker against violence, coercion or intimidation whether by the employer or the union: Adequate protection of the individual worker should be a major obligation of the Congress in the formulation of the Nation's labor policy. The basic freedoms of the individual as a citizen are empty benefits without assurance of the right to work and access to a job. Without adequate protection by public policy, individual rights are at the mercy of the unscrupulous union or employer. The record of industrial disputes during recent years reveals an increased dependence on mass and coercive picketing and the use of violence both with respect to the person and property of employees and of the company.

These basic rights of individuals can be assured only through prohibitions of compulsory union membership and all forms of coercion and intimidation as unfair labor practices backed up by effective penalties.

Again I point out that labor spokesmen make no defense of unlawful tactics such as violent and mass picketing, threats of force, coercion, and other intimidatory tactics against employees or a company. Yet under the Wagner Act they were a frequent, almost routine occurrence.

Taft-Hartley Act provisions dealing with such matters are deficient in important particulars. They have, nevertheless, made a contribution toward minimizing such unlawful practices. In the face of the record to date it is unthinkable that the Congress would remove even these modest restraints and return to the intolerable conditions which existed under the Wagner Act.

Tenth: As a matter of public policy, the collective-bargaining process should be restricted to matters which by their nature can be handled competently and effectively by negotiation: Under this principle, any national labor policy which seeks to effectuate and encourage sound collective bargaining will not insist on burdening the bargaining process with matters beyond its scope and competency. In harmony with this principle, no legal obligation should exist upon employers to bargain and negotiate formal collective agreements in the field of employee benefits, pensions, and welfare. From a practical standpoint



there are many reasons which make these subjects highly impractical to negotiate.

This does not imply that workers should not have the right to ask for and even strike in support of demands involving such matters. But, as a matter of national labor policy, there should be no legal obligation upon employers or penalties invoked for unwillingness to negotiate such matters. Only by observance of this principle will it be possible for national labor policy to maintain the integrity, vitality, and practicability of the collective-bargaining process.

This set of principles represents the judgment and experience of many men involved directly in the evolution of labor-management relations through the years. I urge you to consider these principles carefully in your deliberations to determine a national labor policy that will bring an increasing measure of industrial peace to our country.

We believe that these principles are in the public interest and that the public interest must come first in consideration of a national labor policy.

Since the present national labor policy was established, there is ample evidence of its effectiveness in improving relations between employees and employers in individual companies. The most important benefits may be summarized briefly as follows:

1. Recognition by both labor and management of the responsibility they share under law has increased the mutual respect, mutual confidence, and the will of both parties to reach agreements across the bargaining table.

2. The number and frequency of "quickie" or "outlaw" strikes have been materially reduced as outgrowths of legal responsibility for observance of contracts.

3. Employers, employees, and the community have been afforded badly needed protection against violence and coercion involved in mass picketing.

4. Countless employers, employees, and communities have been spared the bitterness and losses of jurisdictional strikes. Testimony has been offered this committee that in the case of the construction industry and the printing trades jurisdictional strikes have practically ceased since the present national labor policy became effective.

5. Individual companies and their employees, not directly involved in a dispute, have been protected against interruptions of work and loss of income by reason of the ban imposed on secondary boycotts.

6. Elimination of Communist leadership in many labor unions, made possible by the present law, has greatly improved union-management relations and restored the confidence of employers in union motives and objectives.

7. Safeguards thrown around the rights and privileges of the individual employee have given the worker an opportunity to express his will in the choice of his bargaining agents without fear of coercion or intimidation by unions or employers.

8. Presidential intervention in national emergency disputes has saved large segments of the American public from the losses in production and earnings resulting from inability to secure essential raw materials, supplies, or services.

9. Removal of the employers' legal obligation to recognize and bargain with supervisory groups has had a salutary effect upon the unity and effectiveness of the management group and has improved the supervisors' effectiveness in handling relations with employees.

These are specific benefits in terms of improved relations between labor and management in the plants and individual companies of American industry. For the most part, they never could have been realized under the old Wagner Act. Proposals for revision of present national labor policy now under consideration by this committee would seriously endanger, if not largely nullify, these gains.

Let me repeat my plea to consider improving our present national labor policy rather than go backward to a policy of proven failure. Nothing is more vital than labor peace to our national economy right now when we strive for more and more industrial production to meet the domestic and foreign demands on our Nation. The best hope for industrial peace is through preservation of a sound national labor policy.

(Pursuant to the examination of Mr. Mosher, the witness submitted a supplementary statement as follows:)

#### SUPPLEMENTARY STATEMENT OF IRA MOSHER

During the course of my testimony before your committee on February 18, upon examination by individual members of the committee, I was requested or authorized to submit additional data and information as follows:

1. Evidence of the refusal of labor organizations to bargain collectively in good faith during the period the Wagner Act was in effect. This information was requested by Senator Donnell (tr., pp. 3920-3921) ;

2. Evidence of the "one-sided" unfair nature of the Wagner Act, requested by Senator Murray (tr., p. 3979) ;

3. The position of the NAM with respect to certain conclusions of the La Follette "Civil Liberties Committee" as requested by Senators Murray and Pepper (tr., pp. 3984 and 4003) ;

4. The attitude of the NAM toward so-called "liberal" legislation with particular reference to the article appearing in the Harvard Business Review of May 1948, entitled "NAM—Spokesman for Industry," inserted in the record by Senator Humphrey (tr., p. 3992) ; and

5. A detailed response to the attack by Senator Pepper on the NAM and manufacturers generally (tr., pp. 3985-3998).

In the statement which follows, I am setting forth on behalf of myself and the NAM a summary of the pertinent facts and comments regarding each of the items listed above. I would request that this supplementary statement be incorporated in the record of your hearings to follow immediately after the written statement I submitted to the committee on February 18 which was to be inserted in the record (tr., p. 3947).

1. *Refusal of labor organizations to bargain collectively in good faith.*—Under the Wagner Act the duty to bargain collectively in good faith was imposed on employers exclusively. No corresponding duty was placed upon labor organizations. The Taft-Hartley Act equalized this obligation by placing upon labor unions, as well as employers, a duty to bargain collectively in good faith. During my examination before your committee Senator Donnell (tr., p. 3920) requested my comment on the testimony of Mr. William Green, president of the A. F. of L. to the effect that there was no necessity for requiring labor unions to bargain in good faith because collective bargaining was the business of labor unions.

If labor organizations do uniformly engage in good-faith collective bargaining, why should they oppose writing that standard of conduct into law? My response, based upon experience, pointed out however, that under the Wagner Act there was an ever-increasing tendency by various labor organizations to adopt a "take it or leave it" attitude in negotiations, or to adopt other tactics indicating a desire to dictate, rather than bargain over, the terms of collective-bargaining contracts. Outstanding examples, many of which were brought to the attention of the Congress in 1947, include :

*Specific instances where a labor union took advantage of its immunity under law to refuse to bargain collectively*

	Name of union	Statement of fact
I. Nov. 19, 1945 (source: DLR, Index Summary 11 (1945, No. 230: A 12-233: AA-1)).	United Automobile Workers, CIO.	The union refused to bargain by suspending negotiations with the General Motors Corp. with a 24-hour ultimatum. This ultimatum demanded that the company submit a wage dispute to an arbitration board with the condition that any increase be not used as a basis for a price increase on any GM product. The union struck on Nov. 20, even though the company agreed to reply to the ultimatum by Nov. 23. The U. S. Government then stepped into the dispute by appointing a fact-finding panel.
II. November 1945 (source: Letter from the Commerce Printing Industry of New York to the Labor Management Conference then meeting in Washington, D. C.)	International Typographical Union, AFL.	The union refused to bargain by presenting the New York Employing Printers Association with a series of demands and advising them that they had to accept these demands or face a general strike. The employers proposed both conciliation and arbitration which the union declined. The employers capitulated and agreed to the union terms which included a 36½-hour week.
III. Jan. 21, 1946 (source: New York Times, Feb. 3, 1946).	United Steelworkers, CIO.	The union refused to bargain and closed down the entire steel industry until a satisfactory agreement was reached with the United States Steel Corp. This was despite the fact that in many individual plants, collective bargaining was proceeding satisfactorily. In other plants, negotiations had not yet begun and in some cases, demands had not yet been made. Approximately 750,000 members of the United Steelworkers CIO walked out on Jan. 21, 1946. These workers were employed by over 800 different employers, including basic steel mills, aluminum plants, iron foundries, and other plants manufacturing finished steel and aluminum products in plants located in 407 communities in 29 States. They were represented by 1,207 local unions and were employed under 1,003 contracts.

*Specific instances where a labor union took advantage of its immunity under law to refuse to bargain collectively—Continued*

	Name of union	Statement of fact
IV. Jan. 21, 1946 (source: Letter from Mr. Ralph Newhouse, vice president, Hughes Tool Co.)	United Steelworkers, CIO.	The union refused to enter into any real bargaining with the Hughes Tool Co. at Houston, Tex., and on January 21, 1946, struck the plant. The usual strike technique of abusive language, stoning of homes, burning of cars, fights and other acts of violence took place. 24 percent of the employees remained on the job from the start of the strike, and by March 20, 90 percent had returned. Meantime, the union leaders would not permit its members to vote on acceptance of company offer.
V. January 1946 (source: New York Times, Feb. 13, 1946).	Teamsters and Chauffers, AFL.	The union refused to bargain by demanding the abrogation of an existing agreement with the Norman Dairy, Inc., of New Canaan, Conn., and the acceptance of another agreement. The new agreement would have put the company on equal footing with large corporations in the Metropolitan Milk Dealers Association.
VI. Mar. 9, 1946 (source: New York Times, Mar. 9, 1946).	United Steelworkers.	The union refused to bargain and picketed a meeting of 182 employees of the Liggett Spring and Axle Co., Pittsburgh, Pa., preventing the employer from making a final offer to the union during a strike. The company announced the permanent closing of the plant.
VII. Apr. 1, 1946 (source: DLR, Index Summary No. 2 (1946, 69, A 13)).	United Mine Workers, AFL.	The United Mine Workers refused to bargain by declining to present wage demands until after United States bituminous coal operators accepted a union welfare fund tax plan. The union struck Apr. 1 and in May the U. S. Government took over the mines. On May 29, 1946, Secretary Krug signed an agreement with the union providing for 18½ cents an hour increase in pay plus 5 cents a ton for the union welfare fund.
VIII. August 1946 (source: Letter from John Holmes, president, Swift & Co., Feb. 4, 1947).	Amalgamated Meat Cutters and Butcher Workmen, AFL.	The union refused to bargain in good faith by an unreasonable delay in negotiating proceedings. Negotiations were begun in the first week of August 1946. Meetings were held several times each week through the months of August, September, and October with very little progress being made toward any agreement. It was quite apparent to the persons negotiating on behalf of the company that the union was not interested in coming to an agreement on the points at issue with any speed whatsoever. After several months during which meetings were held 3 or 4 times a week, the tempo finally took a turn and in November, agreement had been reached on all points. This change in attitude coincided with the November elections.
IX. Nov. 27, 1946 source: New York Times, Dec. 26, 1946).	United Automobile Workers, CIO.	The union refused to bargain and "broke off negotiations and walked out of a bargaining meeting on Nov. 27." The J. I. Case Co., Racine, Wis., asserts that it has never refused to bargain with the union.
X. Feb. 15, 1947, source: The Baltimore Sun, Feb. 15, 1947).	International Typographical Union, AFL.	The union refused to bargain with the Graphic Arts League, Baltimore, Md., by insisting that the general laws of the union which are in violation of the Labor-Management Relations Act be adopted by the employers as rules and conditions of employment for members of the union. The union refused to execute any written contract incorporating any agreement reached, although requested to do so by the employers.
XI. Feb. 28, 1947, (source: Letter from Robert M. Ney, the Baldwin Locomotive Works, Philadelphia, Pa., Feb. 28, 1947).	Teamsters Union, AFL, Local 929.	The union refused to bargain with the Dock Street Merchants Association at Philadelphia, Pa., until (1) The union was granted the sole right to establish working rules in the industry. (2) The union was given the right to appoint the chairman of the employers' association which represents the employers in their relationship with the union. (3) Their demand was granted that no more than one man in each company would be ineligible for union membership.
XII. Nov. 24, 1947 (source: DLR, Nov. 24, 1947, No. 230, A 6).	Hotel and Restaurant Union AFL, Local 454.	The union refused to bargain in connection with a proposed contract with the Greenwood Cafe, Greenwood, Ala., by giving the management 2 days to reply to demands. Management expressed willingness to negotiation and arbitration but could not meet union deadline of 2 days because company lawyer was temporarily unavailable. The union struck at the expiration of the 2 day ultimatum.
XIII. July 2, 1948 (source: DLR, July 2, 1948, No. 129, E 3).	United Mine Workers.	Union refused to bargain by demanding bituminous mine operators to accept a union shop without NLRB authorization based on employee ballot. Affidavit by Harry M. Moses, representing mine operators stated that union refused to make any collective agreement with 20 companies unless such agreement contained the unconditional union shop provision contained in the National Bituminous Coal Wage Agreement of 1947.



2. *Evidence of the "one-sided" nature of the Wagner Act.*—Upon cross-examination, Senator Murray requested me to specify what was "unfair and unequitable and unjust about the Wagner Act" (transcript, p. 3977).

The biased, unfair, and one-sided nature of the Wagner Act was first pointed out when the Wagner bill was debated by the Senate in 1935 by such distinguished Members of the Senate as former Senator Borah, of Idaho, and Senator Tydings, of Maryland. During the 4 years which followed its enactment, this became evident to practically all segments of our population, including the press, educators, the bar, State legislative assemblies, and even some segments of organized labor.

In my oral statement to your committee I pointed out that in 1939 former Democratic Senator Walsh, of Massachusetts, introduced on behalf of the American Federation of Labor a series of important amendments to the Wagner Act in an attempt to offset extreme favoritism toward the CIO evidenced in the administration of the law (transcript, p. 3916). I likewise called attention to the investigation of a special House committee in 1939-40 which revealed glaring inequalities and bias in the law and its administration (transcript, p. 3917). The one-sided nature of the Wagner Act, and the abuses it encouraged on the part of irresponsible labor leaders, even led President Roosevelt to admit that the act should be amended to establish greater balance.

This same record of inequality and abuses led inevitably to enactment of corrective State legislation, and ultimately to passage of the Taft-Hartley Act.

While it would seem redundant, in face of the record referred to above, I am nevertheless listing below some of the major examples of the one-sided and unfair nature of the Wagner Act. Every one of these illustrations is supported by case histories in the records of your committee.

(a) *Good-faith bargaining not required of unions:* The Wagner Act provided procedures for the selection and designation of employee representatives and makes it an unfair labor practice for an employer to refuse to bargain collectively in good faith with the representative chosen by his employees. No comparable responsibility of good faith dealing is imposed upon employee representatives.

(b) *Bargaining agreements unenforceable against unions:* No Federal law makes unincorporated associations suable in Federal courts. Practically all labor organizations are unincorporated voluntary associations which at common law can neither be sued or sue. In the absence of a State statute, union funds are relieved of liability for unlawful union acts. There is no Federal statute making funds of unincorporated associations subject to judgment. This is in contradistinction to the strict accountability required of employers for contract commitments.

(c) *No protection against unlawful strikes:* The right to strike under the Wagner Act included not only the right to quit work as a group but also the right to return to work if and when desired. Strikers retained their status as employees and had to be reinstated unless as "economic" strikers their places had been filled. In contradistinction to the employee's unhampered right to strike was the complete ban imposed by the act on employer lockouts.

(d) *Employers denied freedom of speech under the Wagner Act:* This is one of the outstanding inequities brought about by overzealous administration of the Wagner Act. It has been admitted by practically all of those familiar with the act, even including such labor leaders as Mr. William Green, president of the American Federation of Labor, who has testified to his willingness that the act be amended in this respect.

(e) *Management compelled to bargain with its own representatives such as supervisory employees:* Distortion of the basic objective of the Wagner Act was nowhere more evident than in the Board's interpretation that foremen were "employees" within the meaning of the act. This, in effect, put the union on both sides of the bargaining table.

(f) *Employers not permitted to petition NLRB:* Unions only were permitted to initiate representation cases and file unfair labor practice charges with the NLRB. There were no union unfair labor practices in the Wagner Act, or remedies given employers against unlawful union practices.

(g) *Right to work not protected:* The right to work was limited through union security provisions encouraged by the Government and protected by the Wagner Act. This provision constituted an invasion of the rights of individual employees and provided no redress for discriminations resulting from such contract clauses.



(h) Jurisdictional disputes: Under the Wagner Act, no relief whatever was available either to the employer or the public in connection with jurisdictional or rival-union disputes.

(i) Submission of individual grievances not permitted: Board interpretation of the Wagner Act effectively foreclosed the right of individual employees to present grievances to their employer without union intervention.

(j) Mass picketing, threats, coercion or intimidation: The Wagner Act afforded no protection to either employees or employers against threats, force, violence, coercion or intimidation by unions and their leaders, although these practices were consistently engaged in with no redress available under the Wagner Act.

The foregoing indicates only a few of the major shortcomings in the Wagner Act which contributed so much to its one-sided character and made collective bargaining thereunder a practical impossibility. This committee has had endless testimony showing conclusively that collective bargaining must be a two-way street with equal rights and obligations on both sides of the table if it is to continue as the basic foundation of our national labor policy.

3. *The so-called La Follette Civil Liberties Committee.*—At page 3984 of the transcript Senator Murray inserted some general conclusions of the special La Follette Civil Liberties Committee pertaining to the activities of the NAM under investigation by that committee between the years 1937-39. Again at page 4003 of the transcript Senator Pepper referred to certain data published by that committee indicating that certain companies represented on the Board of Directors of the NAM had at one time or another employed private detective agencies or had purchased tear gas or munitions.

Before commenting specifically on the conclusions of the La Follette committee, it should be pointed out that the membership of this committee was comprised of two members of the Senate, namely, the former Senator La Follette and Senator Thomas of Utah, the present chairman of this committee. Although the committee spent more than 2 years in an investigation of violations of individual civil rights, it did not during that entire period investigate one single labor organization or one single instance in which such organizations infringed upon civil liberties or civil rights of individual workers.

That same civil liberties committee held the NAM and many of its officers and directors under continuing subpoenas for nearly 2 years, even though it had the full cooperation of the association in obtaining all the information it requested, including examination of the files of the association. The record likewise shows that the hearings of that committee were conducted in a manner as unfair, arbitrary, and un-American as was my examination by certain members of this committee during my appearance before it on February 18.

After insistent demand, the NAM was given an opportunity to present evidence refuting the insinuations and innuendos fabricated by the staff of the La Follette committee from isolated bits and pieces of unrelated correspondence and publications taken from files of the association. The report of the committee describing the policies, the program and activities of the NAM disregarded completely the overwhelming weight of contradictory evidence supplied by the association to the committee. It should be noted that the legislative recommendations of that committee were never enacted into law.

(a) Conclusions of the La Follette committee regarding NAM: In January 1939 the NAM filed data refuting every single accusation made in the report of the La Follette committee. This answer, citing and identifying actual evidence in the record of the hearings of the La Follette committee, appears at page 296, volume III of the report of the La Follette committee, Senate Report 6, part 6. At this point I merely wish to quote the following paragraphs from that refutation and attach as exhibit C the entire text of the answer then supplied by the association:

"Not disputing the right and authority of the committee to draw any conclusions it desires from the testimony received or evidence obtained from its investigation or any portion thereof, we cannot permit certain portions of the above report to go unchallenged \* \* \*

"\* \* \* It is not our conception of democracy to permit an organized minority, whether a labor union or other organization, to disrupt the economic life of a community, to indulge in acts of violence, seizure of property, or other illegal conduct and deny to the rest of the community the right to utilize every legitimate weapon it possesses to restore order and maintain an impartial position in labor disputes \* \* \*.

"The report does, however, by implication attribute to this and other business associations a willingness 'not only to evade enacted laws, not only to undermine democratic order, but to foment the means whereby pecuniarily interested parties can become a law unto themselves.' The report continues with an admonition implying that this association and others, 'seize and foster such movements to the attainment of their own ends.'

"So far as this was intended by implication to apply to the NAM, we deny that this association has evidenced any willingness, or that it has counselled others, to 'evade enacted laws.' The NAM likewise denies any willingness 'to undermine democratic order,' and denies further that it has fomented, seized upon or fostered any movement or activity which evades enacted law, undermines democratic order or interferes with the lawful exercise of civil rights."

(b) Industrial espionage: At page 4003 of the transcript, Senator Pepper inserted in the record a specific excerpt from the La Follette committee report indicating that between 1933 and 1937, 20 companies of a total of 125 represented on the board of directors of the NAM had used detective agencies or purchased industrial munitions, and that 74 companies out of 262 which contributed to the association had likewise either employed detective-agency services or had purchased industrial munitions. Apparently the purpose of these statistics was to imply that a few companies control the policies of NAM, and that NAM favored the use of labor espionage.

The NAM did not in 1937, nor does it today, have any information as to the accuracy of these statistics. The figures are based entirely on the ex parte investigation and conclusions of the La Follette committee. These figures, nevertheless, fail to reveal the extent to which detective agencies were employed by these manufacturing companies for protection of plant property, detection of theft or recovery of stolen property. The figures likewise fail to disclose the purpose for which tear gas or small arms and ammunition may have been purchased, whether for the normal use of plant guards or to protect property during labor disputes.

Typically, the committee report suggested the inference to be drawn, namely, that these agencies were employed for the purpose of interfering with civil rights. Reliance on inference and innuendo, not evidence or proof, characterized the reports of that committee. In spite of the above, the association, in its reply to the La Follette committee in 1939 stated as follows:

"First. There is no testimony whatever in the record to warrant any inference or suggestion that the NAM either uses or has encouraged the use of labor spies or tear gas.

"Second. That the statistics submitted by the secretary of the committee are inaccurate and misleading in three respects:

"(a) The analysis attempts to demonstrate that 207 companies control policies of the NAM and that these same 207 companies employed detective agencies and purchased tear gas. Since the same testimony likewise shows that only 45 of the 207 companies purchased tear gas over a 5-year period, and that only 55 of these NAM members employed the services of detective agencies, it is obviously improper to attribute such practices to the entire 207 companies.

"(b) The statistical analysis does not disclose whether the 45 companies which used detective agencies were included in the 55 companies which purchased tear gas.

"(c) This analysis was obviously designed to suggest that approximately 50 to 100 companies controlled the labor policies of the NAM. This is absurd on its face. It is significant that during the year of this investigation, and in the face of such charges, the NAM membership was increasing by approximately 3,000 new members; the largest annual increase in recent years."

With regard to the implication that NAM approved the use of labor spies or other strikebreaking techniques (because a small number of its members purchased such supplies or employed detective agencies) I am quoting below from a statement submitted by the association to the Senate Committee on Education and Labor in May, 1939 commenting on legislation pending before that committee to prohibit the use of labor spies or the purchase of small arms and ammunition.

"First. While the National Association of Manufacturers, as indicated above, has been subjected to continued investigating by the Senate subcommittee investigating alleged violation of civil liberties, not one iota of evidence has been found to suggest that this association has ever engaged in or advised or sug-

gested that its members should employ or utilize any of the practices defined in S. 1970.

"Second. The National Association of Manufacturers strongly opposes and condemns the use of espionage, strikebreaking agencies, professional strikebreakers, armed guards, or munitions for the purpose of interfering with or destroying the legitimate rights of labor to self-organization and collective bargaining.

"Third. The National Association of Manufacturers is just as vigorously opposed to strong-armed and coercive methods employed by labor organizations in obtaining members or during strikes called to enforce their demands. By 'strong-armed methods' we refer to the common use of mass picketing, employment of professional pickets (now called 'professional strikemakers'), illegal possession or destruction of property and the possession and use of weapons and numbers to intimidate, threaten or inflict injury upon employees, the employer and the public."

4. *Charges by Senator Pepper.*—In the course of my cross-examination by members of the committee, Senator Pepper indulged in a tirade of accusations against the NAM and against manufacturers generally. Although not one of Senator Pepper's questions or accusations related to the subject of labor legislation upon which I appeared as a witness, the committee nevertheless extended to me permission to examine the record and to answer each of Senator Pepper's charges against the motives, the performance and the patriotism of American industry. To do this, I have sought to identify and isolate each of the major points in Senator Pepper's indictment in order to respond directly to every point of his attack.

(a) Political affiliation of NAM members: "Senator Pepper (tr. p. 3985) sought to develop whether any substantial percentage of the membership of NAM had supported either President Roosevelt or President Truman in their campaigns for election to the Presidency. Obviously his questions were designed to establish some kind of a background upon which to support his later charges that NAM and manufacturers generally were "reactionary."

First. NAM is a corporation. It is prohibited by law from making expenditures or contributions to support candidates for Federal office. The NAM has not and does not, therefore, support or oppose such candidates.

Second. Membership in the NAM is not based upon the political views or affiliations of manufacturing companies. The NAM does not seek to control or influence the political affiliation or views of its members. Geographically, however, its membership is about equally divided between companies operating in the North and in the South. It is reasonable, therefore, to assume that a substantial number of individuals connected with manufacturing companies are affiliated with both major parties.

Third. The NAM, as an organization of manufacturers, develops, through participation by its members, principles, policies, and programs designed to improve the performance of American industry and promote the welfare of the entire Nation. These principles, policies, and programs are developed without regard to political affiliation of the membership. Where they involve questions of public policy they are presented as recommendations to both major political parties.

(b) NAM as a liberal or reactionary organization: In another series of questions and statements (tr. pp. 3986-3990) Senator Pepper endeavored to develop that NAM and manufacturers generally (1) never support any liberal legislation, (2) never do anything to help the people to get better houses, better wages, better schools, etc., and (3) that NAM "is the spearhead and the symbol of the reactionary forces in this country."

(c) Harvard Business Review article: In connection with Senator Pepper's attempt to prove that NAM has never supported any so-called liberal legislation, Senator Humphrey introduced into the record an article which appeared in the Harvard Business Review, May 1948, entitled "NAM Spokesman for Industry." The author of this article listed numerous legislative matters which came before the Congress during the period 1933 to 1941 and contended that NAM opposed every single one of these measures. It is my purpose here, therefore, to respond not only to Senator Pepper's charges but equally to the supporting accusations made by Senator Humphrey.

First. Let me emphasize that neither I nor the NAM believes that true liberalism is measured by support for legislation designed to regiment the American people under a Federal bureaucracy. It is quite unlikely, therefore, that we could agree with Senators Pepper or Humphrey on a true definition of "liberal."



For the purpose of this statement, therefore, I am merely commenting on the list of legislative measures included in the Harvard Business Review article, whether or not any particular measure would be classed as "liberal" or "reactionary" or neither.

Second. It is a basic philosophy of NAM and its membership that American industry, which includes investors, labor, and management, has done far more to provide the people of America with better homes, better wages, better schools, and a better living than have all political speeches, political promises, or legislative enactments combined. We believe this progress can and will be continued so long as industry is permitted the freedom to maintain and secure constantly modernized industrial equipment and adequate capital, and so long as incentive is provided for a well-trained, efficient, and enlightened management to exercise a reasonable degree of freedom from governmental control in the production of goods and services.

Third. The attitude of NAM toward specific legislation, now or in the past, is and was based upon the combined judgment of its members, then or now, whether such legislation would aid or obstruct our economic progress under the capitalistic system. To the extent legislative proposals seek to inject socialistic doctrines into a system of private capitalism, it is natural—even inevitable—that such doctrine be opposed by those seeking to preserve and improve our system of private capitalism.

Fourth. The article which appeared in the Harvard Business Review, including the list of legislative proposals which NAM is reported to have opposed, is incomplete, misleading, and based upon an effort to prove preconceived notions rather than upon scholarly or objective research.

When the article appeared Mr. Morris Sayre, president of NAM, challenged its accuracy in a letter to Edward C. Bursk, editor of the Harvard Business School, declaring:

"In summary, it seems to me that this article is so biased, so full of errors, and so along the 'line' taken by the radical press that it should have no place in the Harvard Business Review, which most of us so greatly respect."

Inaccuracies in the article are many. In general, however, these arise because the author, in about one-third of the cases listed, classed as "opposition" any objection to a single line or provision of such legislation, whether or not such objections were followed by suggestions for its improvement, and whether or not NAM opposed or supported the general purpose of specific legislation.

For example, in connection with the Food and Drug Act, the Agricultural Adjustment Act (1938), the Agricultural Price Parity Act, the Securities Exchange Commission Act, and the Banking Act of 1935, no appearances were made by the NAM in connection with this legislation. The NAM was one of the first to advocate pure food and drug laws. However, the legislation here in question was the so-called Copeland Act in the Seventy-fourth Congress, 1935, at which time the NAM did not appear.

In the reciprocal trade agreements legislation in the Seventy-third Congress, the NAM specifically approved the purpose and objective of this legislation but urged that since they would be in the nature of treaties, such agreements should be subject to ratification by the Senate.

In the Public Works Administration Act in the Seventy-third Congress, the NAM appeared only in connection with that part of the legislation dealing with the National Recovery Administration. Approval of the objectives was voiced, but the soundness and practicality of methods and means to execute these objectives were questioned as being too general in terms, and serious doubt existed as to the constitutionality of the licensing provisions. The soundness of these views was later verified by the decision of the Supreme Court declaring the NRA unconstitutional. The NAM took no position on the public works features of this particular legislation.

In connection with the Railway Pension Act, a letter was submitted to the Senate Committee on Interstate Commerce, in which the NAM opposed the imposition of additional costs without provision for additional revenues at that particular time (April 1934). The NAM did not, however, take any position on the pension question as such.

Again, in connection with legislative consideration of the Robinson-Patman Act in 1935, the association took no position on the discrimination features of the act, except as to quantity discounts. The bill under consideration would have precluded discounts for quantities greater than carload lots. It was the



position of the association that it would be unwise to report a bill which gave no recognition to legitimate price differentials based on quantity discounts.

On the Fair Labor Standards Act legislation of 1937, the NAM specifically endorsed the child labor provisions but was of the opinion that minimum wages and maximum hours were matters more appropriately within the jurisdiction of the several States, and so expressed itself to the committee.

The foregoing examples are sufficient to indicate the glaring shortcomings and deficiencies of this article's accuracy as to facts. It is difficult to see how any fair-minded individual could construe either "no appearance" or "approval with reservations" as outright opposition to legislation.

The article was equally unfair and incomplete because it dismissed in cavalier fashion a long record of constructive, positive proposals or programs supported by the NAM. It stated that the following were the only proposals of a "constructive" nature the NAM could point to:

"\* \* \* encouragement of trade; creation of the Department of Commerce, the National Safety Council, and the Federal Reserve System; advocacy of the Panama Canal, pure food laws, and western reclamation; the sponsorship of various business organizations, and certain efforts with respect to privately managed compensation, health, and pension benefits. A significant aspect of these achievements is that all of them occurred prior to 1920."

This conclusion of the author was obviously the result of faulty research designed to support a preconceived opinion of the NAM. It completely avoids any effort to fill in details or even mention any one of many additional measures or programs advocated and supported by the NAM through the years.

For example, no mention is made of NAM's consistent support, since as early as 1927, of measures designed to facilitate reorganization of Government departments as a means to elimination of duplicated effort and expense.

NAM support of the Walter-Logan bill in 1939 (forerunner of our present Administrative Procedure Act) designed to improve the functioning of administrative agencies is likewise not mentioned.

In 1933 the NAM endorsed the gold embargo imposed by President Roosevelt. It has likewise and consistently over the years advocated and supported appropriate legislative measures to eliminate child labor and sweatshops in manufacturing industry. These were not mentioned in the article.

Other measures and programs believed to be constructive and in the public interest, advocated by NAM in more recent years include the following:

*Employment stabilization.*—In October of 1930 the NAM called together manufacturers of this Nation for a national conference on community and industrial plans for employment, security, and stabilization. This program has continued with vigor to the present day.

In 1936 the NAM pushed vigorously for a Government census of unemployment, which was achieved in 1937.

*Full-employment bill.*—In 1935, while opposing certain provisions of the Murray full employment bill, the NAM gave full endorsement to the purposes and objectives of this legislation and offered a constructive program which it believed would materially assist in maintaining full employment.

*Workmen's compensation.*—The NAM was one of the first to urge adoption of adequate workmen's compensation legislation. As far back as 1911 the association went on record endorsing and urging legislation to provide efficient compensation for every wage worker and for every injury except those due to criminal carelessness or drunkenness.

*Older and physically handicapped workers.*—On January 26, 1948, the NAM recommended to its members that they do not establish any fixed age limit on employment below any which might be fixed for permanent retirement.

In October 1943 the NAM urged employers to make special efforts to provide such employment for those veterans who have been wounded or have been discharged for medical reasons resulting from their service. Employers were urged to realize the work limitations of such veterans and endeavor to adjust them to work suitable to their qualifications.

The NAM has consistently urged its members to exert even greater efforts to make the fullest possible productive utilization of handicapped veterans and has given wholehearted cooperation to governmental programs directed toward this end.

In 1947 the NAM Congress of American Industry called upon all individual employers, regardless of size or industry, to reexamine their jobs and operations, to locate additional job opportunities both for veterans and for physically handicapped civilians.

## INDUSTRIAL RELATIONS

*President's Labor-Management Conference.*—In 1945 the National Association of Manufacturers cooperated with the President of the United States in the holding of the President's Labor-Management Conference called in Washington, and endorsed as its own the industrial relations platform unanimously adopted by the industry delegates. This constituted the first comprehensive management program in history designed to establish a national labor policy in the public interest. Among other things, this program declared—

1. The objective of collective bargaining is voluntary agreement between employers and the freely chosen representatives of their employees with respect to wages, hours and working conditions.

2. Collective bargaining is, and must be, accepted by employers, employees, and their representatives as a process to negotiate agreements mutually advantageous to the employer, the employees, and to the public served by the enterprise.

3. Collective bargaining is not possible except under conditions of law and order and the absence of force. The public has the right to insist that management and labor at all times practice collective bargaining with full regard for protection of individuals and protection against unlawful acts.

4. It is of fundamental importance that contract commitments made be observed, without qualification, for employers, employees and labor organizations.

5. For years, in the public interest, legislation and governmental regulations have controlled the activities and defined the responsibilities of employers. Likewise, in the public interest, the activities of labor organizations should be controlled and their responsibilities appropriately defined to assure equality of status before the law. Equity requires that both parties to a labor agreement be equally answerable as entities in judicial proceedings for conduct in violation of contracts or legal requirements.

*Labor legislation.*—The NAM has for years advocated the establishment of a sound national labor policy based upon equality of rights and obligations under the law. It has consistently supported labor legislation designed to correct demonstrated inequalities and abusive practices which had grown up under the Wagner Act, the Norris-LaGuardia Act, etc. While it is not expected that all members of the committee will agree, it is our conviction that advocacy and support of such legislation must be considered as constructive and in the public interest as well, for industrial peace is the only objective sought.

*Other matters.*—In addition to the foregoing the NAM has consistently given aid and support to appropriate measures for strengthening and improving our educational system. It has supported and cooperated with all efforts to improve our international relations and standing in foreign affairs, particularly of recent date through the European recovery program.

Sound policies with respect to Government spending, taxation, the public debt, monopolies, housing, and the like, have been approved and urged by the association again and again. While there may be differences of viewpoint with respect to these policies, it is entirely unfair to write them off as being based solely on the narrow self-interest of the members of this association.

The above article, as well as the questioning by Senators Pepper and Humphrey, erroneously assumed that the NAM is primarily a political or legislative organization. NAM is basically a service organization for accumulation, interchange, and distribution of information and experience to and among its membership on all matters of interest to manufacturers.

Such services—completely overlooked in the article here in question—include extensive economic research, development, and advocacy of good industrial relations techniques through clinics, institutes, etc., representation of manufacturers on governmental advisory committees, boards, etc., and the distribution of information in periodicals, a weekly newsletter, and pamphlets.

*Patriotism of manufacturers.*—During the course of Senator Pepper's speech, he declared that "as a general rule it was the poor people whose sons went to the battlefields and a lot of the manufacturers' sons who stayed at home and got rich, and I know a lot of them—."

That statement was unfair and untrue. Except for the large numbers who voluntarily enlisted, military service was determined under the Selective Service Act, passed by the Congress, and administered by local draft boards. The Senator, therefore, not only unjustly questioned the patriotism of the sons of loyal Americans engaged in manufacturing pursuits; he also attacked the integrity of every local draft board in the country.

Without pressing the matter any further, I merely wish to call attention to the wide public indignation and resentment brought about by Senator Pepper's unwarranted charges.

American industry, and I include workers, investors, and management, performed a miracle of production during the war. Its record of performance has received almost universal praise and tribute. In doing this war production job, industry and the Government received no small measure of aid and assistance from NAM. The former Chairman of the War Production Board has written that:

"Right after Pearl Harbor, under the auspices of the National Association of Manufacturers, I met with 150 industrial leaders representing the most important companies in America, and I appealed to them 'to get going.' One sticking point was the length of time that it took to get a contract signed by the Government. Our fighting men needed weapons and we could not wait for contracts to plow their way through Government red tape. I took it upon myself to assure our industrialists that if they went ahead without waiting for contracts, they would not take a loss.

"They did not hesitate. Contracts or no contracts, they agreed to put their plants to work without delay on the weapons and equipment we desperately needed. Moreover, they formed a strong committee which aroused businessmen all over the country to all-out speed and action, and their message was reiterated throughout the country by the NAM."

(What Industry Did, by Donald M. Nelson, p. 219, from While You Were Gone; a report on wartime life in the United States, edited by Jack Goodman. Simon and Schuster, New York, 1946.)

*War profits.*—Senator Pepper, on page 3990 (transcript), accused manufacturers of war profiteering, and subsequently shifted his attack to current or postwar industrial profits. Later (transcript, pp. 3997-3998) I denied these assertions and referred to the wartime excess-profits taxes (which, incidentally, was advocated by NAM) and to the renegotiation laws which permitted the Government to control profits of war contractors. In further answer to Senator Pepper's charge, I am quoting below from statements of the Special Senate Committee Investigating the National Defense Program (the Truman committee), and of Donald M. Nelson, Chairman of the War Production Board.

"The committee found that most accountants who had been active on renegotiation work felt that the Renegotiation Act had been administered fairly and had accomplished its purpose. However, some accountants felt that price adjustment boards were not generous enough with the low-cost efficient wartime producers."

(Report No. 440, pt. 2, 80th Cong., 2d sess., U. S. Congress, Senate Special Committee Investigating the National Defense Program. Additional report of the \* \* \* pursuant to S. Res. 71 (80th Cong.) \* \* \* Renegotiation. February 20, 1948, p. 4, par. 4.)

"From my personal observations, I can say that the great majority of American industries did not try to make big profits out of war production. Aside from patriotic feeling, they recognized the danger to industry itself of profiteering as a breeder of public resentment."

(What Industry Did, by Donald M. Nelson, p. 221, from While You Were Gone; a report on wartime life in the United States, edited by Jack Goodman. Simon and Schuster, New York, 1946.)

Official Government statistics bear out these conclusions.

Manufacturers produced more than half a trillion dollars of goods and services in the 4 years following Pearl Harbor—a total of \$548,000,000,000—according to Department of Commerce figures.

The Federal and State income taxes for those 4 years averaged 61 percent on every dollar of operating profit—i. e., taxable net income.

The profits of manufacturing corporations after taxes in those 4 years combined (1942-45) amounted to \$21,000,000,000 in round numbers, according to the latest Department of Commerce estimates.

Measuring the 4-year final profit against the 4-year total of sales volume, we find the final profit margin averaged 3.9 percent per dollar of sales.

This 3.9 percent rate of profit on sales was substantially lower than the average rate of profit in the years from 1935 right up to Pearl Harbor.

Whether profits are measured against sales volume or net worth, the trend of the rates of profit will be found sliding downward in the war years as com-



pared with prewar years. We do not measure profits against net worth, because the net worth yardstick is misrepresented to the public as a measure of investment, whereas actually it does not represent any current value. It is a book figure.

The attached data sheet summarizes the profit margins on sales obtained by the 20 major manufacturing industries year by year throughout the war period. The figures cover 1929 through 1947. These statistics have been adjusted by the United States Department of Commerce to reflect the appropriate application of renegotiation of war contracts and the amortization of emergency war plants. The inventory valuation adjustment estimated by the Department of Commerce has been applied here before calculation of profit margins. (This inventory adjustment during the war was only a fraction of its recent magnitude.) The effects of the excess-profits taxes and the high wartime normal tax are also taken into account by the Department of Commerce in computing the profit data.

Nowhere in this record of wartime profits is there any indication of greed or profiteering. The rate of industrial profit during the war was actually lower than it had been in the depressed years immediately preceding the war.

Many people think that the stock market was booming during World War II, but actually the reverse was the case. While stockholders were getting a moderate rise in industrial dividends for income purposes, their investments in common stocks of industry took a beating. The Dow-Jones index of industrial stock prices crumbled from a level of 155 when the war started in Europe in 1939, to a level of 93 by the middle of 1942. That was a crash of 40 percent in the prices of industrial stocks, and these stock prices did not recover to the 155 level until a short time before VE-day early in 1945. All the popular talk about a stock-market boom during the war is sheer nonsense in the light of these facts. What stockholders enjoyed during those war years was one of the most severe recessions in stock prices on record, followed by a gradual recovery to a normal level as victory crept in sight.

*Conclusion.*—In concluding this supplementary statement, I wish to say again what I said when I appeared before your committee on February 18. Maintaining and promoting labor peace, better feelings between management and labor, is the most important task before our country today. Manufacturers, and the NAM, too, want to cooperate 100 percent in finding the right answers to this problem, and in a way which is fair and just to employees and employers alike.

In that spirit I submitted to your committee a series of proposals developed by members of NAM after many years of intensive experience, study, and debate. We think these principles are constructive. They are not political. They are not injurious to the interest of labor. They were prepared with the public interest squarely before us. Once again I urge you to consider them seriously and without prejudice.



*Corporate profit margins on sales (after inventory adjustment)—Complete picture for 20 manufacturing industries (also wholesale and retail trade, contract construction, mining, and service industries, including motion pictures)*<sup>1</sup>

NET INCOME AFTER TAXES AS A PERCENTAGE OF DOLLAR VOLUME OF SALES

	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947
Food and kindred products.....	3.0	5.8	4.3	3.0	.9	1.3	2.6	3.0	3.9	3.6	3.0	3.4	1.2	1.6	1.5	2.4	2.3	1.9	2.1
Tobacco manufactures.....	7.9	12.9	16.5	20.1	6.8	4.8	9.4	1.8	5.5	7.5	12.7	9.8	1.5	-2.1	-3.8	1.4	-2.1	-1.9	1.2
Textile mill products.....	4.7	3.8	1.5	-3.0	-7.9	1.5	1.0	2.6	5.3	-----	-6	3.9	1.0	3.2	3.8	3.3	3.5	6.7	8.3
Apparel and other finished fabrics products.....	2.4	1.3	.7	-3.6	-4.0	1.5	.3	1.3	1.2	.7	-6	1.6	-1	1.5	2.4	2.4	2.5	1.9	3.1
Lumber and timber basic products.....	5.4	2.6	-8.2	-19.5	-20.2	-3.2	.3	3.3	5.7	.7	2.2	4.0	6.0	5.6	4.5	4.7	4.1	7.0	8.1
Furniture and finished lumber products.....	2.6	.2	-3.5	-11.2	-14.2	-7	-1	1.9	2.0	.7	1.7	1.2	2.2	2.6	1.8	2.8	2.9	1.9	-1.0
Paper and allied products.....	5.7	4.1	1.1	-2.2	-1.3	4.3	4.8	3.8	2.5	.7	2.9	3.8	6.5	5.8	4.2	4.3	4.0	6.2	8.2
Printing and publishing.....	7.7	5.5	3.3	.2	1.3	2.9	4.6	5.1	3.6	2.2	4.1	4.3	3.8	4.2	5.7	6.8	6.0	6.6	5.4
Chemical and allied products.....	9.9	7.1	9.2	5.2	10.1	6.2	6.9	7.5	9.1	7.7	9.3	9.0	4.3	5.6	5.5	4.7	4.2	4.8	5.4
Products of petroleum and coal.....	12.1	9.9	2.4	-1.7	-4.5	-1.2	1.0	2.8	5.7	4.4	2.9	4.1	4.5	6.4	6.8	5.7	4.6	5.5	6.5
Rubber products.....	4.1	3.7	7.1	-4.0	-7.1	-7.5	3.2	-1.4	3.8	.4	2.3	3.5	3.4	4.4	3.0	3.7	2.6	4.5	5.1
Leather and leather products.....	4.8	4.5	1.9	1.4	-5.0	4.5	-1.0	1.9	1.7	1.3	.1	2.8	1.9	2.5	3.1	3.2	2.1	0	1.9
Stone, clay, and glass products.....	8.0	3.6	3.3	-18.7	-5.3	2.4	5.1	8.8	6.7	4.1	8.5	8.3	7.3	5.3	4.3	3.8	4.0	6.0	6.9
Iron and steel and their products.....	8.7	5.9	-3.8	-17.3	-6.5	-1.6	2.5	4.4	3.4	1.1	3.9	5.9	6.4	4.6	3.7	3.6	2.3	3.0	5.3
Nonferrous metals and their products.....	6.9	9.7	5.4	-1.7	-5.6	5.5	6.2	5.7	5.9	3.4	5.8	7.3	6.1	4.4	4.7	4.1	3.3	2.5	3.8
Machinery (except electric).....	9.5	7.7	-8	-13.3	-4.6	1.8	6.5	8.2	6.2	6.5	7.5	9.3	8.5	5.5	4.6	5.0	2.9	1.3	4.9
Electrical machinery.....	10.3	8.2	3.1	-6.2	-4.1	-4.2	5.3	8.3	6.5	5.0	8.0	8.7	7.7	4.4	4.3	5.4	2.3	-2.6	4.2
Transportation equipment, excluding automotive.....	7.3	5.0	7.5	-14.4	-14.9	-5.1	-2.8	2.5	3.6	3.2	6.5	10.3	7.5	3.7	3.0	3.5	1.8	-11.3	-2.4
Automobiles and automobile equipment.....	7.2	5.4	2.1	-12.2	1.6	2.6	5.2	6.3	5.0	1.9	7.5	7.0	5.5	2.9	3.4	3.8	1.6	-1.9	5.2
Miscellaneous.....	5.4	4.3	-2	-7.4	-4.3	2.8	5.8	5.9	5.1	5.8	6.1	7.0	4.5	4.1	3.9	4.1	3.4	.8	4
All manufacturing corporations.....	6.7	6.1	2.6	-4.5	-2.0	1.5	3.4	4.3	4.8	3.5	4.4	5.7	4.4	3.8	3.5	3.8	2.8	2.7	4.4
Mining.....	11.4	8.2	-3.2	-2.9	-5.0	6.5	6.6	9.3	12.3	7.5	9.5	11.7	12.0	10.4	9.8	9.2	7.7	6.3	9.1
Contract.....	3.7	3.8	.7	-6.3	-8.0	-2.9	-7	.9	.9	1.0	.6	1.5	2.4	2.4	1.6	1.0	.9	1.8	2.1
Trade.....	1.9	1.9	.6	-2.0	-2.6	.5	1.0	1.1	1.4	1.5	1.0	1.6	.6	1.3	1.9	2.2	2.2	1.4	1.4
Wholesale trade.....	1.7	2.1	.9	-1.1	-2.0	.2	.9	.7	1.6	1.3	.7	1.5	.3	.9	1.3	1.6	1.5	.5	.5
Retail trade.....	2.0	1.8	.4	-2.6	-3.1	.8	1.0	1.6	1.3	1.7	1.3	1.7	1.0	1.7	2.6	2.6	2.9	2.3	2.5
Services <sup>2</sup> .....	3.7	1.9	-1.7	-8.9	-6.1	-1.4	-.4	.6	1.2	.6	1.3	1.7	2.8	3.6	4.7	4.7	4.7	7.0	6.3

<sup>1</sup> Margins computed by NAM directly from sales, inventory, and profit data published by U. S. Department of Commerce in National Income Supplement to Survey of Current Business, July 1947, and the Survey of Current Business for July 1948. The Commerce Department made adjustments for renegotiation of war contracts, for spreading the amortization of emergency war plants, and for excess-profits tax carry-back credits. Changes in inventory valuation due to price changes and apart from physical changes (as computed by Commerce Department) have been taken out of profits in this tabulation. Purpose of these adjustments is to get a clearer picture of true profits year by year. Minus figures are losses.

<sup>2</sup> Services include, hotels, health, legal, engineering, amusements, trade schools, etc., and do not involve the inventory adjustment.

Prepared by NAM Research Department, October 1948.

## EXHIBIT

APPENDIX 10. STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS  
ON THE COMMITTEE'S INVESTIGATION

JANUARY 26, 1939.

HONORABLE ROBERT M. LA FOLLETTE, JR.,

*Chairman, Special Subcommittee of Senate Committee on Education and  
Labor, under Senate Resolution 266, 74th Congress,**Washington, D. C.*

The following statement is submitted to supplement the testimony of N. A. M. witnesses examined by your Committee in March 1938.

It is recognized, of course, that hearings held pursuant to investigations of this nature are not comparable to proceedings in judicial tribunals. In such proceedings witnesses are first given an opportunity to present their own testimony with some degree of continuity before submitting to cross-examination. In hearings of the first type, however, we realize that a different procedure may be necessary. In such proceedings witnesses may be compelled to testify first as to specific events, activities or policies and often these are isolated or incomplete. The results, therefore may be erroneous or misleading. Since first impressions are of greatest importance, particularly in a hearing of considerable length, this original error often cannot be overcome by subsequent statements or lengthily exhibits submitted by witnesses at a later stage of the hearings. Consequently we submit for the record further factual material concerning matters subjected to inquiry by your Committee. This further material referred to is not in the nature of new evidence. It is already included in the record in the form of exhibits or has been furnished to your Committee pursuant to subpoena.

## LABOR POLICIES OF THE N. A. M.

Since the policies of the N. A. M. with respect to rights of employees to join labor organizations for the purpose of collective bargaining have long been a matter of public record, there should be no necessity for any elaborate exposition. However, the investigation of your Committee has embraced all activities of the N. A. M., and by emphasis on particular activities has tended to obscure the basic principles which have guided the Association since its formation. Also, because of the suggestive nature of particular questions propounded to witnesses called upon to testify on behalf of the Association, certain policies may be erroneously ascribed to the N. A. M. by members of Congress or others who may casually examine the testimony. Consequently we submit for the record additional information with respect to specific policies subjected to examination of your Committee.

(a) *Early statements of labor policies* (rec. pp. 7397-7401).—On page 7398 of the hearings, Senator La Follette referred to the following excerpt from the "Declaration of Labor Principles" adopted by the N. A. M. in 1903. (See exhibit 3801, p. 7546.)

The following colloquy then ensued:

"Senator LA FOLLETTE. I should like to call your attention to a few statements of labor policies which have been made by representatives of the Association in the past.

"I offer for the record a statement published in a magazine entitled 'American Industries'."

(The document was marked "Exhibit 3803" and appears in the appendix on p. 7547).

"Senator LA FOLLETTE. 'American Industries' was a magazine published by the Association, was it not?

"Mr. WEISENBURGER. That was before my time, Senator.

"Mr. SARGENT. There was such a magazine; yes, sir.

"Senator LA FOLLETTE. The date of this exhibit was 1904 which would be just a year after the adoption of the principles just referred to in the previous question in 1903. It reads as follows:

"We are not opposed to good unionism, if such exists anywhere. The American Federation brand of unionism, however, is un-American, illegal, and indecent because their constitution is simply based on the plan that "We will rule you or ruin you." The manufacturer, therefore,

has a right to discriminate against an employee who is affiliated directly or indirectly with an organization that resorts to these methods.'

"That is dated August 5, 1904."

Even a casual examination of this Exhibit reveals the misleading nature of the excerpt inserted in the Record as evidence of N. A. M. policy. Mere quotation of the title of the article appearing in "American Industries" is sufficient to disclose that the word "we" referred not to the N. A. M. but to an individual company writing an account of its own experiences. The caption on the article was as follows:

"'An Unfair House' writes from the far West" (Exhibit 3803, Record, p. 7547).

In contrast to the above and the two succeeding references to isolated excerpts from addresses of 1904 and 1911, we respectfully offer as the best evidence of the policies of the N. A. M.:

First, the sworn testimony of Walter B. Weisenburger before the committee on Tuesday, March 8, 1938, Record, p. 7848-7859, as follows:

"In the field of labor relations as in its other activities, the chief function of the National Association of Manufacturers is the dissemination of knowledge and sound principles to aid its members and others to develop sound and successful practices. Through meetings, study, and research, its employment relations committee members recommend the policies to the association which, when approved through the usual channels, become those of the organization. Having no power to enforce these principles upon its members, every effort is made to encourage by precept the adoption of these progressive codes.

"The Association first entered the field of employment relations around 1903.

"It adopted its first declaration of principles on labor policy in 1903.

"President Roosevelt appointed an investigating committee which in its 1903 report recommended as a basic policy that—

'No person shall be refused employment, or in any way discriminated against, on account of membership or non-membership in any labor organization.'

"He will subsequently be observed that this is Point No. 3 in the N. A. M.'s Labor Principles adopted in 1903; it continues to be the Association's basic labor policy today.

"In addition to recording its opposition to the closed shop, the Association in 1903 recognized the rights of labor to organize, expressed its belief that 'fair dealing is the fundamental and basic principle upon which relations between employer and employee should rest,' recorded its opposition to 'boycotts, blacklists, and other illegal acts of interference with the personal liberty of employer or employee,' disapproved 'absolutely of strikes and lockouts,' and urged 'an equitable adjustment of all differences between employers and employees, by any amicable method that will preserve the rights of both parties.' (A complete record of the principles adopted in 1903 is part of Appendix II, 'A Record of N. A. M. Labor Policies')."

"These same principles adopted in 1903 still guide the employment relations policies of the Association today. Built upon the keystone set by Theodore Roosevelt, we believe that they embody the basic philosophy of labor relations fundamentally necessary to the success of an industrial Democracy."

Second, excerpts from Platform of American Industry adopted by the N. A. M. December 8, 1938, as follows:

#### "LABOR RELATIONS

"Industry recognizes mutually satisfactory labor relationships as an essential to industrial efficiency and to the providing of more jobs and better living.

"Industrial management recognizes that employees who wish to bargain collectively are entitled to do so, in whatever form they determine, through their own freely chosen representatives, and without intimidation or restraint from any source.

"The disturbed labor relations which have existed during the past few years are a major obstacle to recovery. Industry pledges its full cooperation in whatever changes may be necessary to correct these conditions.

"In order to promote mutually satisfactory labor relations which will increase production and provide more jobs, we urge employers to maintain a



well-defined labor policy suitable to the conditions of the company, community, and industry; to provide opportunity for free interchange of ideas between management and employees on all matters of common interest, adequate opportunity for prompt consideration and adjustment of complaints and fair wages for work performed, with incentives where they can be fairly applied as a reward for individual or group accomplishment; to maintain good working conditions.

"Constant improvement of the methods of production creates jobs. Industrial management should endeavor to cushion the effects on individual employees of the introduction of new processes and labor-saving machinery; management and labor should cooperate in using every practicable means to provide continuity of employment, and should study the annual wages of employees in relation to their hourly earnings and the number of days per year the plant operates, including careful consideration of the effect of hourly rates upon the continuity of employment and income."

(b) *Use of so-called labor spies and tear gas.*—Beginning on Page 7381 of the Hearings, the secretary of your Committee presented his analysis of income statistics of the N. A. M. for the years 1933 through 1937. It was then developed that during the year 1936 some 207 companies contributed 48.9 percent of the total income of the association. (Record, p. 7386.) It was also developed that:

"Twenty-seven members of the National Association of Manufacturers were active members of the National Metal Trades during the 5-year period. The committee has already investigated the National Metal Trades Association. It was very actively engaged in the field of industrial espionage."

The secretary of your Committee also stated:

"In the next column but one we show the payments that these 207 firms and their subsidiaries, made to industrial detective agencies during the years 1933 to 1937, inclusive. This data was secured from the records of the committee and from sworn statements filed with the committee by the manufacturers."

"Mr. WOHLFORTH. It is interesting to note, with respect to the purchases of tear gas by these 207 firms, that approximately 60 percent of all the tear gas purchased by all industrial firms in the United States during this period was purchased by these 207 companies or their subsidiaries. The total sales of tear gas to all industrial companies, ascertained by the committee, for the 5 years, was approximately \$500,000. The total purchases indicated on this chart by these 207 companies comes to \$296,000. These purchases were made by 45 companies."

While this testimony was objected to as irrelevant to an investigation into policies or activities of the N. A. M., this objection was overruled by Senator La Follette. Also, while Senator La Follette denied that the testimony implied that "any policy of the N. A. M. has been to suggest to its members the use of tear gas" (Record p. 7388), nevertheless Senator Thomas himself suggested an equally unfair inference intended to be drawn from this testimony. The following exchange occurred:

"Senator THOMAS. Mr. Gall, you would not, of course, want to leave the impression that the policy of your organization is not controlled by its members, would you?"

"Mr. GALL. The policy of our organization is fixed by its membership; yes, sir."

Senator THOMAS. Yes, so that if the controlling group of its members uses a certain policy in one place it would be perfectly proper for us to point out that it might be interested in the same policy in another place, would it not?"

With reference to this testimony, we submit the following:

First, there is no testimony whatever in the record to warrant any inference or suggestion that the N. A. M. either uses or has encouraged the use of labor spies or tear gas.

Second, that the statistics submitted by the secretary of the Committee are inaccurate and misleading in three respects:

(a) The analysis attempts to demonstrate that 207 companies control policies of the N. A. M. and that these same 207 companies employed detective agencies and purchased tear gas. Since the same testimony likewise shows that only 45 of the 207 companies purchased tear gas over a five year period, and that only 55 of these N. A. M. members employed the services of detective agencies, it is obviously improper to attribute such practices to the entire 207 companies.



- (b) The statistical analysis does not disclose whether the 45 companies which used detective agencies were included in the 55 companies which purchased tear gas.
- (c) This analysis was obviously designed to suggest that approximately 50 to 100 companies controlled the labor policies of the N. A. M.. This is absurd on its face. It is significant that during the year of this investigation, and in the face of such charges, the N. A. M. membership was increasing by approximately 3,000 new members; the largest annual increase in recent years.

The policies of the N. A. M. dealing with employment relations and other subjects as well, are determined in the manner described in the testimony of Walter B. Weisenburger, Executive Vice President of the N. A. M. (Record pp. 7853-55), as follows:

"POLICY FORMING ACTIVITIES OF N. A. M.

"Original and ultimate power on all Association policies rests with the membership. Its decisions are made at the Annual Congress of American Industry (our annual convention, in the deliberation of which nonmember manufacturers as well as members participate), at special meetings, and occasionally by mail polls.

"The Board of Directors is the chief governing body of the Association during the period between membership meetings. (A complete roster of Board members is attached as Appendix D.) All of its members must be members of the Association and are selected as follows:

"Twelve members are elected at large from the whole United States by the entire membership. Forty-three (in the case of the 1938 Board) are elected from states, by the members in that state. The number (maximum of three) from each state depends upon the number of members in that state. There are also four regional directors representing groups of two or three less highly industrialized states, none of which have sufficient members to merit individual directors.

"A nominating committee, appointed by the President and confirmed by the Board, selects the candidates for directors. Others may be nominated directly by members through petitions. Nomination is not tantamount to election, since a number of members are usually nominated for each position.

"There are seven presidential appointees on the Board. The President upon recommendation of the National Industrial Council, also appoints three Board members from among the members of associations represented in each of the three divisions of the Council (a total of nine such presidential appointees, which must be approved by the Board).

"Regular meetings of the Board are held monthly, except during July and August.

*"Officers of the N. A. M.*

"The following officers are elected by the Board, after nomination by the above mentioned nominating committee:

- President
- Chairman of the Board of Directors
- Chairman of the Executive Committee
- Three National Vice Presidents
- Not Over Seven Regional Vice Presidents
- Treasurer
- Executive Vice President (salaried)
- Secretary (salaried)

"The Board elects its own Executive Committee of not less than nine members, which may act in its behalf in the interim between Board meetings.

"A more complete outline of the procedure by which these bodies act upon policy matters is attached as Appendix E.

*"Standing Committees.*

"In its policy deliberations, the Board and Executive Committee receive reports and recommendations from the 20 standing committees on the following subjects:

- Agricultural Cooperation
- Economic Security
- Employment Relations
- Government Competition

Government Finance  
 Relation of Government to Industry  
 Industrial Practices  
 Industrial Employment  
 Pacific Coast Cooperation  
 Patents and Trade Marks  
 Public Relations  
 Tariff  
 Transportation  
 Industrial Economics  
 Depressions  
 N. A. M. Development  
 Industrial Financing  
 Working Conditions

"A summary of the scope of activities of each of these committees is attached as Appendix F.

"I honestly wish that I had the opportunity and the time to place before you gentlemen and the public the full story of the work done by these committees—of how these manufacturers, so busy that their time could not be bought for any amount of money, give up many full days and not infrequently entire week ends, to the study of these fundamental national problems.

"About 500 members are serving on these committees in 1938, some coming all the way from the Pacific Coast, to attend sessions. 103 such committee and board meetings were held during 1937.

"Every N. A. M. member receives a committee questionnaire early each year upon which he indicates the committee service in which he is interested, and our Committee personnel is based largely on the replies to those questionnaires.

"Annual reports of these committees are reviewed by the Board of Directors, by a Coordinating Committee (a preconvention Resolutions Committee) and the Resolutions Committee of the Convention and offered to the Congress of American Industry for final adoption.

"So that they may reflect the thinking of the members of the affiliated associations in the National Industrial Council as well, the proposed reports also are reviewed by the Resolutions Committee for the Council's Annual Meeting. Three members of that Resolutions Committee become members of the N. A. M.'s Resolutions Committee, as indicated on the chart, so that their ideas may be insured of having adequate consideration.

#### "EFFECTUATION OF N. A. M. POLICIES

"Once policies have been determined, how are they effectuated? I am sure this Committee desires a full discussion of this point. For on every hand today are examples of fine purposes and sound policies which, distorted by faulty administration, are securing results exactly contrary to what is desired.

"The chief executive officer of the Association is its President. Under his direction is an Executive Vice President, who supervises the active management of the Association and is in charge of employed staff members and all their activities. As a matter of practice, when major questions of administrative policy arise, he consults with the Association's President or Executive Committee or both."

(c) *Attitude with respect to employee representation plans.*—At various stages of the hearings during examination of N. A. M. witnesses, references were constantly made to the policy and activities of the Association with reference to employee representation plans. While no extended inquiry was conducted to clarify the attitude or activities of the Association with respect to this subject, the nature of specific questions directed at witnesses might create an erroneous impression:

(1) That the N. A. M. advocated adoption or inauguration by employers of such plans for the purpose of thwarting the voluntary organization of employees in other forms of organization, and (2) that this activity constituted an attempt to defeat the purposes of the law and interfere with civil rights.

The questions giving rise to this possible inference appear in the Record in

connection with the N. A. M. activities with reference to Section 7 (a) of the N. I. R. A. as follows:

"Senator LA FOLLETTE. I offer for the record—it may be given an exhibit number and printed in the record—a pamphlet entitled 'Employee Representation Manual, issued by the National Association of Manufacturers.' The introduction is dated February 23, 1934."

(The document was marked "Exhibit 3821" and appears in the appendix on pp. 7576-7585.)

"Senator LA FOLLETTE. This pamphlet or manual states that company unions should not be introduced 'with the intention of merely blocking the development of a labor union.' Was that the position of the association, Mr. Lund?"

"Mr. LUND. I did not hear you; I am sorry."

"Senator LA FOLLETTE. This manual states that company unions should not be introduced with the intention of merely blocking the development of a labor union. Was that the position of the Association?"

"Mr. LUND. I would like to hear the rest of the statement. I would say that a correct statement would leave out the word 'merely.'"

"Senator LA FOLLETTE. I do not want to read the whole book."

"Mr. LUND. You did not read very much of it, only two lines."

"Senator LA FOLLETTE. I do not want you to think that I am unfairly taking out excerpts from it. I will compromise with you and go as far as you like. The paragraph from which that excerpt was taken is under the heading, 'Steps in the introduction of a plan of representation' and the paragraph reads as follows:

'The first step is for the management to decide whether they are wholeheartedly in favor of employee representation in principle. They should not go into it with any reservations or any intention of merely blocking the development of a labor union, but only with a firm conviction that they will approach the subject honestly and openly, and with a sincere desire to help provide a method that is most effective in reaching the rank and file of the employees, affording them adequate and effective representation in dealing with questions arising out of their employment, and in obtaining the cooperation of the entire supervisory force.'

"Was that a correct statement, that they were not to go into this merely with the idea of blocking the development of a labor union, but that they were to go into it as indicated not with that objective in mind? Is that a correct statement of the association's position?"

"Mr. LUND. It sounds correct to me, Senator. I still have not gotten all of it. I am just listening to what you read."

While the second and more complete excerpt quoted by Senator La Follette should overcome any suggestion that the Manual was designed to defeat or impair any rights of employees described in Section 7 (a) of the NIRA, this conclusion is inevitable upon examination of the entire Manual, and particularly the following excerpts:

"An employee representation plan under which those employees of a company who desire to do so select fellow employees to represent them for the purpose of collective bargaining with management represents one of the most important forms of collective bargaining contemplated by Section 7 (a). The statute, unfortunately, describes such a plan as a 'company union.' It is such only in the sense that it is confined to the employees of a particular company. The only limitations Section 7 (a) imposes with respect to employee representation plans are:

"1. That is their right to organize and bargain collectively through representatives of their own choosing, employees shall be free from the interference, restraint, or coercion of the employer or his agents; and

"2. That no person shall be required as a condition of employment to become a member of this particular form of organization."

"The prohibition against interference, restraint or coercion does not in any sense prevent the employer from having normal relations with his employees and counseling them as to the course of conduct which he believes to be to their own interests or the mutual interest of the company and its employees. The Section forbids coercion but it does not forbid cooperation, consultation,



and guidance on the part of the employer. The employer is as free to advise his employees to participate or not to participate in a plan of employee representation as he is to advise them to join or not to join a trade union. The important point is that he may not penalize them in any way if they disregard his advice.

#### "FAILURES OF PLANS OF EMPLOYEE REPRESENTATION"

"Up to this point we have outlined how to institute a plan of representation and have enumerated some of the problems to be met and some of the advantages accruing to both employer and employee. Lest we give the impression that there is only one side to the picture of employee representation, we wish to present some of the reasons why some small number of employee representation plans have failed or will be likely to fail.

"1. A cumbersome plan will retard the settlement of disputes, will make both management and employees impatient, and will lead to lengthy arguments on methods of procedure to the neglect of the real business at hand.

"2. A plan that provides only for meetings in case of grievances will soon deteriorate into a source of irritation to all parties.

"3. A plan that is installed without proper preparation will more often than not run into difficulties which will kill it.

"4. A plan that is conceived and operated as an instrument to prevent unionization is likely to fail.

"5. Whenever management fails to act in accordance with the principles or with the spirit of a plan of employee representation, it will arouse suspicion in the minds of the employees and will eventually lead to the disintegration of the plan.

"6. A plan that is made a part of a bonus scheme or 'profit sharing' device will last only as long as the financial return is satisfactory to the employees. These are two distinct subjects and while bonus and financial incentives are subjects for consideration under a plan of employee representation, they are not part and parcel of such a plan.

"7. The failure to give to management representatives in committee meetings sufficient authority to settle the questions which are being considered by these committees will shake the confidence of the employees and will culminate in the break-down of the plan.

"8. A plan that is left to run itself without proper planning and development by both management and employees, will lose its way and be in danger of collapse.

"9. A plan that attempts to limit the discussion of employee representatives to prescribe subjects will arouse suspicion and ultimately fail.

"10. A plan that is developed from an existing organization of employees in a mutual benefit association or in a social group is likely to subordinate the real purposes of employee representation and therefore to be ineffective.

"In conclusion, a plan of employee representation which is introduced with the proper spirit behind it, after adequate preparation on the part of management and in such a way as to obtain the real interest of employees, will, when properly conducted, be an effective medium for improving the understanding between employer and employee and will provide machinery for collective bargaining under the National Industrial Recovery Act." (Exhibit 3821, Record p. 7576, et seq.)

The legal status of such plans under Section 7 (a), as described in the Manual, is corroborated by a statement of the Administrator, General Johnson, published at approximately the same time:

"Under Section 7 (a) employers are forbidden to require 'as a condition of employment' that an employee shall either 'join a company union' or 'refrain from joining, organizing, or assisting a labor organization of his own choosing.' The law does not prohibit the existence of a local labor organization, which may be called a company union and is composed only of the employees of the company. But it does prohibit an employer from requiring, as a condition of employment, that any employee join a company union and it prohibits the maintenance of a company union, or any other labor organization, by the interference, restraint, or coercion of an employer." (Exhibit 3801, Record p. 7542.)



## EMPLOYEE REPRESENTATION PLANS UNDER THE NATIONAL LABOR RELATIONS ACT

Again on Page 7447 of the Record Senator La Follette pursued his inquiry into this subject as follows:

"Senator LA FOLLETTE. After the Wagner Act was passed, did the National Association of Manufacturers continue to recommend the establishment of company unions?"

"Mr. WEISENBURGER. You mean by 'company unions' employee-representation plans, Senator?"

"Senator LA FOLLETTE. Yes, when they fall in that category."

"Mr. WEISENBURGER. May I ask Mr. Sargent who handled that, to answer that question?"

"Senator LA FOLLETTE. Yes."

"Mr. SARGENT. May I explain, Senator, that we have never been believers that there is any panacea in any field of labor relations. We have never recommended at any time to members or manufacturers inquiring at any time that they establish employee-representation plans. We have endeavored to give them information concerning such plans, and we continued to give such information after the passage of the Wagner Act, calling attention, however, to the limitations imposed by the Act."

"Senator LA FOLLETTE. Did you continue, as you prefer to put it, to furnish information about these plans after the Act was upheld by the Supreme Court on April 12, 1937?"

"Mr. SARGENT. We supplied information in our bulletins concerning the nature of independent unions and their operations. We have never then nor previously recommended nor urged the enactment of such plans by anybody."

The testimony of the witness expresses fully and accurately the sole purpose for which information pertaining to employee representation plans was distributed at any time by the N. A. M. This Association has not advocated use of such plans to defeat or impair the right of employees to join or form any labor organization they might choose. Nor has the Association suggested or advised that any of its members should dominate or interfere with any such plan in violation of any law or final judicial interpretation thereof. It is our belief that our members are entitled to all information available on important subjects pertaining to industry and such information is never distributed with any intent, suggestion or hope that it be improperly used. There is, of course, nothing in the record to indicate that any such improper or unlawful use was made of any material or information thus distributed by the Association on this or any other subject.

## ATTITUDE TOWARD NATIONAL LABOR RELATIONS ACT

Beginning on Page 7440 of the Record, the Committee inquired at length into a bulletin of July 23, 1935, containing an opinion of the N. A. M. Law Department that the National Labor Relations Act did not apply to employers engaged in manufacturing. We do not deny that subsequent decisions of the Supreme Court demonstrated this opinion to be in error. It has been suggested by certain critics of the Association that this opinion in effect counselled employers to ignore or defy the law. While this was not charged by your Committee, the nature of the interrogation referred to (Record, pp. 7440-7442) suggests a similar accusation.

In this particular, therefore, we refer to the complete statement submitted to your Committee entitled "Attitude of the N. A. M. toward the National Labor Relations Act and the National Labor Relations Board" (Exhibit 3892, Record pp. 7367-73). There it was stated:

"In signing the National Labor Relations Act President Roosevelt issued a public statement describing the law, in which he said:

"It does not cover all industry and labor, but is applicable only when violation of the legal right of independent self-organization would burden or obstruct interstate commerce."

This statement stimulated numerous inquiries directed to the law department of the association from members desiring to ascertain whether the law applied to manufacturers generally. Consequently, on July 23 a subsequent bulletin was issued giving the opinion of our law department on this vital question. Relying on precedents which, up to that time, had not been even questioned by the Supreme Court of the United States, the law department expressed the opinion that the law could not constitutionally be applied to employers engaged in local manufacturing operations. It was recognized,

however, that application of the law would be based on practical considerations, and there was certainly no suggestion ever made that employers should ignore the law or fail to protect their rights by participating in any hearing conducted by the National Labor Relations Board. On the contrary, the concluding paragraph of this opinion pointed out that:

'In any controversy which may be the occasion for a formal complaint by the National Labor Relations Board, careful consideration should be given to procedure to be followed by the employer. The answer should be clear and complete, and should contain any reservations as to the jurisdiction of the Board, as well as responses to specific charges. It will then be well to consider, even in cases where it is believed the Board has no jurisdiction, whether appearance should be made, directly or through counsel, for the purpose of seeing that the record is accurate and complete. It must be remembered that on appeal the courts will review the record made before the Board, and in some cases the nature of the record may determine the character of the court's decision.'

This opinion was consistently expressed by the law department whenever its views were sought and at no time was any suggestion made to our membership that any proceeding by the National Labor Relations Board could properly be restrained by injunction. To summarize the attitude of this association toward the act up through July 1935, it appears:

First, that we vigorously opposed enactment of the National Labor Relations Act, second, that when the Wagner bill was signed by the President the association adopted the perfectly normal attitude that it was now law, and third, that in each attempted application of that law the procedure outlined in the act should be followed.

From this time forward the basic policy of this association was to keep its membership informed on all phases of administration of the act by the National Labor Relations Board and likewise to keep our members advised on the progress of judicial review of Board orders. When the National Labor Relations Board was organized we distributed copies of its rules and regulations and in the early days even cooperated with the Board in mimeographing early complaints issued by it. At this time it will be recalled the offices of the Labor Board were transferred from the Labor Department, and due to lack of funds and facilities it had difficulty in meeting requests for copies of its early complaints and releases. Throughout the remainder of 1935, the entire year of 1936, and through April 1937, this policy remained paramount and consistent. The only alteration occasioned by the Supreme Court decisions of April 1937 was in relation to the extended application of the law to employment relations in manufacture. In communicating an analysis of these decisions to our membership, the law department of the association pointed out that while the law had now been sustained in certain manufacturing cases, the scope of the act was still obscure and uncertain. Again it was pointed out that each case must be determined on its own facts and that it was essential for every employer to participate in any Labor Board hearing. The general attitude of the association at that time was clearly expressed in this bulletin of April 16, 1937, in the following paragraphs:

#### EFFECT OF OPINIONS

'The Supreme Court of the United States in these cases has sustained the validity and application of the National Labor Relations Act to the field of employment in local manufacture to an unprecedented extent. It is the law of the land. Our problem now is to ascertain the nature and extent of our obligations. While many things are clear, others remain obscure or uncertain.

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Aside from the necessity of revising our views concerning the application of the act, the decisions of the Supreme Court created no change in association policy or activity. The association has continued to keep its members advised on important interpretations announced by the National Labor Relations Board and on the progress of litigation in the courts. Where it has not agreed with such interpretations it has not hesitated to express disagreement. At all times, however, the viewpoint of the National Labor Relations Board has been given expression and on at least two occasions

representatives of the Board have addressed the membership of the association at its annual conventions. On the first of these occasions Chairman J. Warren Madden addressed a luncheon meeting of the Association in December 1935 in New York and his address was broadcast by radio. Again in 1937 Mr. Charles Fahy, general counsel for the Board, likewise addressed our annual meeting and participated in a closed question and answer discussion of important interpretations of the National Labor Relations Act.

Our attitude toward the National Labor Relations Act and the administration are well summarized in a letter written by us to Hon. J. Warren Madden on March 31, 1937—prior to the Supreme Court's decisions sustaining the act:

"The Association does not deny, but in fact affirms, that it was publicly opposed to passage of the National Labor Relations Act. It continues to believe that the Act as applied by the Board is not conducive to the best interests of American employers or employees. However, it is not true that legal advisors to this Association undertook to incite industry 'to defy the act.' Furthermore, the legal advisors of the Association have never at any time since the passage of the National Labor Relations Act advised the Association or its members that the act is unconstitutional in its entirety. The legal advisors of the Association have taken exactly the same position as that taken by the President of the United States when he signed the act on July 5, 1935. The President said, 'It does not cover all industry and labor, but is applicable only when violation of the legal right of independent self-organization would burden or obstruct interstate commerce.'

Furthermore, we have supplied to your committee more than 100 legal opinions to members of our association covering practically every important provision of the act. Your committee will look in vain for a single one of these opinions in which we advised that the act as a whole was unconstitutional or in which we advised resistance to the Board or its agents."

#### RELATIONSHIP OF N. A. M. TO SO-CALLED "CITIZENS COMMITTEE", "LAW AND ORDER LEAGUES" OR "VIGILANTISM"

While no direct charge was made during the hearings that this Association had participated in or encouraged the formation or activities of so-called "citizens committees," "back-to-work movements," "law and order committees," or "vigilantes" to defeat or interfere with civil rights or liberties, it is obvious from the nature of the examination that such connection was sought to be established. Consequently we submit this additional material pertaining to the following:

##### *Remington-Rand Strike.*

Beginning on page 7779 of the Record, the Committee inquired at length into a bulletin of the N. A. M. containing an article entitled "A Community Organizes."

This article was the subject of considerable criticism by the Committee which the facts show to be unfounded. The following facts are submitted so that the record may be clear:

1. On page 7781-83 of the Record, Senator La Follette quoted excerpts from the article describing (a) "Policies and Activities of the 'Citizens' Committee," appointment of deputy sheriffs and the organization of an independent union and "back-to-work" movement. The Senator then inquired:

"It is clear, is it not, that the technique which was described in this article previously was, in these paragraphs, given the approval of the National Association of Manufacturers, was it not?"

Mr. SARGENT. "As a means of meeting a particular local situation; yes, sir."

Senator La Follette then referred to the decisions of the National Labor Relations Board, and certain of its findings of fact and conclusions of law, to the effect that the various community activities were sponsored by the Remington-Rand Company in direct violation of law. Senator La Follette then inquired:

"At the time that you published the article in your Labor Relations Bulletin in which you stated the desire of your association 'of bringing to the attention of industrial America the constructive manner in which this controversy was handled by these villages,' were you familiar with the fact, as a result of the investigations which you had made prior to the publication of this article, were you familiar with the facts as subsequently found by the National Labor Relations Board which I have called to your attention?"



Mr. WEISENBURGER. "Maybe I can cover it in this fashion, Senator, by saying that this was reporting a job on the conditions as we found them, as of the date, the approximate date of publication. The National Labor Relations Board subsequently passed upon it, and then the courts passed upon it, and you will find no record of where we have advised our members concerning this situation or anything involved in the court's decision covering this case."

Senator LA FOLLETTE. "What I am interested in is whether your investigation, which you made, and made through another person connected with your staff, you developed facts which the Labor Board found to be the situation prior to the time that you printed this article?"

With reference to the Board's findings and conclusion, we refer to the decision of the U. S. Circuit Court of Appeals reviewing the decision and order of the Board. This was inserted in the record as Exhibit 3896, Record pp. 8181-8191. The following comments of the court are pertinent:

#### BOARD'S FINDINGS OF FACT

"The decision on which the order was issued is extremely voluminous, covering more than 200 pages of the printed record; it is rather in the nature of a discursive opinion than of specific findings of fact, but it ends with certain conclusions of law followed by the order, a copy of which is annexed at the end hereof."

#### BACK-TO-WORK ORGANIZATIONS

"An exception is the emergency of two company or plan unions as a result of 'back-to-work associations' which sprang up at Ilion and Middletown; the formation of a similar union at Syracuse need not concern us for the order does not include it. These two unions are still in existence; their common representative has intervened in this court, but no justiciable issue arises, about them except over Section I (b) and Section II (a) of the Board's order, which enjoin the respondent from 'dominating or interfering with' any labor union, or 'contributing' to its support, and require it not to recognize, but on the contrary to 'disestablish,' the two unions. This presupposes that the respondent took a hand in fostering their creation; the evidence is purely inferential."

It is evident from the above that the quality of the Board's findings of fact was not such as to justify their use by the Committee as a standard of impartiality, or correctness upon which to judge the accuracy of the article appearing in the N. A. M. Bulletin.

Furthermore, Senator La Follette was erroneously informed in stating that the activities of the citizens' committee described in the Bulletin referred to constituted a violation of the N. L. R. A.

In addition to the apparent attempt to place this Association in the position of approving activities prohibited by federal law (which the Circuit Court of Appeals held was not the case), the questioning at this point in the hearings likewise endeavored to show that the article described and approved activities of the Remington-Rand Company during the strike. This was expressly denied in the Record by the testimony of Mr. Noel Sargent, Secretary of the N. A. M. as follows:

Senator LA FOLLETTE. "What I want to know, and I think it is a pertinent question, is whether or not after you read this opinion, you altered your own judgment and opinion of the strike, that the strike had been handled in Ilion in a constructive manner, which is the way in which you described it in the July 20 bulletin."

Mr. SARGENT. "We were not discussing the company handling of the strike in the July bulletin. We were discussing the development of a citizens' committee by citizens of the community. That is the only thing, I think, we discussed in that bulletin. Senator. You are referring here to the handling of the aspects of the Remington-Rand strike which had not been gone into in our July bulletin."

A similar charge was made by the NLRB against this Association in March 1937, many months before this Association was served with subpoenas by your Committee, and was promptly denied to the Board and publicly.

In a letter from the Association to the Board (Exhibit 3863, p. 8015 Record) attention was called to the statement appearing in a press release of the Board



announcing its decision in the Remington-Rand case. The release stated in part: "The decision described in detail the application of the above devices to each of the plants affected. It relates how at Ilion, New York, a village of 10,000 people, the company worked out and applied successfully to break the strike, a technique termed by it the 'Mohawk Valley Formula' and states that Rand was so proud of that formula that he had the National Association of Manufacturers describe its operation in its Labor Relations Bulletin."

The NAM replied as follows:

"So far as the reference of the Board to the Association in the Remington-Rand case is concerned, we did not publish and Mr. Rand never requested the publication of such information, nor do we have any information that such a company formula for strike-breaking is in existence. The only article published by the Association which dealt in any manner with the strike situation at the Remington-Rand plants was the description of community efforts by public officials and neutral citizens to maintain law and order while a strike was in progress.

"The Executive Committee of the National Association of Manufacturers has asked me to make the position of the Association clear to the National Labor Relations Board so that there can be no possibility of a misunderstanding on this subject."

### *NAM Literature*

Beginning on page 7813 of the hearings, the Committee questioned witnesses of this Association with reference to a pamphlet entitled "Industrial Strife and the Third Party," distributed by the Association in the summer of 1937. The purpose of the questioning is revealed in the following:

Senator LA FOLLETTE. "Will you turn to page 11 of the pamphlet, which discusses the situation in Ohio during the steel strike? The second paragraph on that page states:

'Shopkeepers, local businessmen, professional men, and farmers in Ohio felt that the prolonged strike had seriously hurt them. Supplementing this group were many steel workers who desired to work but were prevented by a strongly organized and militant minority. The valley is today seething with the spirit of vigilantism, which has failed to materialize in a formal organization only because there has been no pressing need for this as yet.'

Is not that statement suggestive of the need for a formal organization of this sentiment?"

Mr. WEISENBURGER. "It could be interpreted, but not so intended, if that is referring to the fact that we by this statement instigated a movement that subsequently developed there."

Senator LA FOLLETTE. "Regardless of the intent, this last sentence which I have read does suggest the need for formal organization of this seething spirit of vigilantism, does it not?"

Mr. WEISENBURGER. "Well, it states that it failed to materialize because there was no pressing need for it."

Senator LA FOLLETTE. "In addition to the organization of vigilante groups, does not this pamphlet and the import of it, specifically in the import of it, suggest the same citizens' committee and the back-to-work movement?"

Mr. WEISENBURGER. "It might be suggestive of the citizens' movement. I do not know just exactly what you mean by back-to-work movement. If you mean back to prosperity, I would say it probably had that inference."

Senator LA FOLLETTE. "Look at page 2:"

'The peculiar thing about such a back-to-work campaign is that it is conducted in many ways like campaigns which strike organizers undertake when preparing for a walk-out call. In other words, a counter-organization is set up.'

"Would you not agree, Mr. Weisenburger, that that suggests the setting up of back-to-work movements?"

Mr. WEISENBURGER. "Yes; I think that is true, and I probably would want to withdraw my other remark."

Senator LA FOLLETTE. "In essence, this is the 'Mohawk Valley Formula' restated, is it not?"

Mr. WEISENBURGER. "No; because we have never participated in circulating the so-called Mohawk Formula as such."

Senator LA FOLLETTE. "I will withdraw the 'Mohawk Valley Formula' part of my question and if this does not, in essence, suggest the same community activities that you placed your stamp of approval on in Ilion?"

It is realized that the import of this pamphlet is essentially a matter of opinion predetermined in part by the purpose for which it is examined. It is not our purpose, therefore, to endeavor to alter opinions already formed. We do, however, offer the following facts for the record so that persons who have not heretofore sat in judgment may have all pertinent factors before them.

#### NATURE OF PAMPHLET

An examination of the pamphlet itself (Exhibit 3873, Record, p. 8031) reveals its true nature as merely a report of past and current developments in particular communities involved in serious labor disputes. The opening paragraphs of the pamphlet read:

#### INDUSTRIAL STRIFE AND "THE THIRD PARTY"

"The breakdown of Law and Order in many communities as a result of the impasse between labor and industry has caused a third party to interfere in the struggle. This party is composed of merchants, professional men, farmers, white-collar workers and other groups which are known as the Public. This activity has been expressed principally in two directions: a spirit of Vigilantism in different areas of the country, which seeks to maintain Law and Order, where Chaos and Anarchy threaten; and, secondly, the formation of Citizens' Committees in communities afflicted with labor difficulties in a development which must be given cognizance. An analysis of the course of events in this field since the beginning of this year reveals that this movement has been chiefly centered in three states of our Union, namely, Michigan, Ohio, and Pennsylvania."

The pamphlet contained a summary of reports of the American Institute of Public Opinion on the attitude of the public toward labor and strikes.

#### PURPOSE OF PAMPHLET

The pamphlet contained no word which directly or by reasonable inference could be construed as a suggestion by the NAM that the activities reported in various communities should be generally followed or adopted. According to the testimony of Mr. W. B. Weisenburger, Executive Vice President of the NAM:

"Let me say, in the first place, that the Association did not have anything to do with the creation of any of these citizens' movements at any time, we did not *communicate* or incite them, or instruct them, or advise them. As you know, about the time that this pamphlet was issued, which was about the first part of July, there was considerable of this movement in the country, because of the widespread labor difficulties, and we decided to make a study of this character."

This testimony was under oath and uncontradicted by the Committee or any other witness. As in other instances, this document was intended solely for the purpose of describing events, past and current, and not to suggest to employers or others the methods used in the communities described or any other practices in connection with labor disputes.

We are not unmindful of the fact that the Committee has already formulated its own conclusions with respect to this phase of its investigation. (Senate Report No. 46, Part 4, April 15, 1938, 75th Congress, 3rd Session.) We also wish to recall the exchange between Senator La Follette and Mr. Gall, Counsel for the NAM on March 8. Mr. Gall requested permission to present certain material and the following discussion ensued:

Mr. GALL. "Senator, without wishing to stress the point too much, I would like to say that a part of the purpose of making this—it is in the nature of what would be a report on an examiner's report in litigation. We believe the record at this point, in other words, justifies certain conclusions. This is our opinion only, of what those conclusions are, and we should like to read it, because we think it will assist the committee. If we are wrong in believing the record justifies these conclusions, the committee itself will wish to introduce material on those points, it seems to us."

Senator LA FOLLETTE. "I do not want to quibble with you about anything you want to put in the record, but it would not seem to me to be the appropriate place to put it in, because the inquiry is not concluded, and more testimony is going in, and it would seem like saying that the record is completed at this point, and I therefore do not see any point in it or the logic of it."

Mr. GALL. "We feel we have put in, in the way of affirmative documents, all we wish, except we would like to supplement them with certain points, if on examination of the record it seems necessary."

Senator LA FOLLETTE. "It would seem to me, Mr. Gall, that the record not being finished and the inquiry not being concluded, that the time for you to present a summary is when it is finished."

Mr. GALL. "May I confer with Mr. Weisenburger on this point for a moment?"

Senator LA FOLLETTE. "Certainly."

Mr. GALL. "Senator, we defer to your judgment in that matter; we have no wish to press it."

Senator LA FOLLETTE. "Since it is not evidence and the testimony is not all in, it seems to me you may want to change or alter it."

Mr. GALL. "I do not want to insist—."

Senator LA FOLLETTE. "I do not want to be in the position of resisting, but I believe the time to do that is after you have had a chance to study the testimony and the committee has had a chance to go over the material you are putting in now, and you will then be given full opportunity to present any statement you wish."

Nevertheless, the Committee report referred to was published within approximately a month thereafter and without any further opportunity being extended to this Association to submit supplemental material.

*Interim Report of Committee* (Senate Report No. 46, Part 4, April 15, 1938).—Not disputing the right and authority of the Committee to draw any conclusions it desires from the testimony received or evidence obtained from its investigation or any portion thereof, we cannot permit certain portions of the above report to go unchallenged since it is obvious that portions of the Report beginning on page 3 refer directly to this Association.

The Report refers to the pamphlet "Industrial Strike and the Third Party" as "a menace to democratic government." This is the Committee's conclusion with which this Association flatly disagrees. It is not our conception of democracy to permit an organized minority, whether a labor union or other organization, to disrupt the economic life of a community, to indulge in acts of violence, seizure of property, or other illegal conduct and deny to the rest of the community the right to utilize every legitimate weapon it possesses to restore order and maintain an impartial position in labor disputes. This is obviously contrary to the views of the Committee, and since it is a matter of opinion, we press it no further. It may be significant, however, that in the three States in which these citizens' committees were most active, namely, Michigan, Pennsylvania, and Ohio, such activities were apparently approved by a majority of the citizens participating in the democratic processes incident to the elections of November 1938.

The Report does, however, by implication attribute to this and other business associations a willingness "not only to evade enacted laws, not only to undermine democratic order, but to foment the means whereby pecuniarily interested parties can become a law unto themselves." The Report continues with an admonition implying that this association and others, "seize and foster such movements to the attainment of their own ends."

So far as this was intended by implication to apply to the N. A. M., we deny that this Association has evidenced any willingness, or that it has counselled others, to "evade enacted laws." The N. A. M. likewise denies any willingness "to undermine democratic order," and denies further that it has fomented, seized upon, or fostered any movement or activity which evades enacted law, undermines democratic order, or interferes with the lawful exercise of civil rights.

Aside from the extreme inferences drawn by the Committee from distribution of the pamphlet "Industrial Strife and the Third Party" and from the article entitled "A Community Organizes," there is no evidence whatever in the Record to justify the arbitrary conclusions contained in this portion of the Committee's Report relating to the N. A. M. It was apparent from the remainder of this interim report that these arbitrary and unfounded conclusions were purely self-serving to justify the Committee's request for additional funds.

At this point we refer to the testimony beginning on page 8561 of the Hearings during which the Committee sought to develop a direct connection between the N. A. M. and certain citizens' organizations, notably Johnstown, Pa.

Senator LA FOLLETTE. "So far as you know, and since you have been connected with the National Association of Manufacturers, has the association ever lent its support to any other community efforts of this nature, aside from Johnstown?"



Mr. WEISENBURGER. "I wouldn't say aside from Johnstown even. We have not, directly or indirectly, supported the Johnstown Citizens' or the national movement, or any other community movement so far as I am aware."

The extended hearings of the Committee incident to its investigation into the formation and activities of particular citizens' committees are likewise barren of any evidence that the N. A. M. instigated or participated in such movements. (See Hearings, Parts 19-21.)

#### EDUCATIONAL PROGRAM

All phases of the educational or public information activities of the N. A. M. have been examined by the Committee. From the Record it appears that but one small part of this activity would have any relation whatever to civil rights or civil liberties of the kind under investigation by the Committee. So that it may be examined in its proper perspective, however, the outline of the entire program, as given in the testimony of Mr. W. B. Weisenburger, inserted here (Record pp. 7861-7865) :

#### "PUBLIC INFORMATION PROGRAM

The Association not only believes in an increased understanding among its members and their employees, but also that the public has a right to know about the policies and problems of business which affect its daily welfare.

As early as March 28, 1916, the Association called its members to join in correcting people's misconceptions of industry. It said then :

"The basis for the work lies in our belief that the public is misinformed, or thoughtless, as to the benefits which flow to every element of society, to every individual, through the activities of honest, unhampered, constructive industrial concerns \* \* \*, the cure for this lamentable state of affairs is the spreading of the truth and the awakening of the public's sense of mutual interest and responsibility."

Since February 1934, the National Association of Manufacturers has carried on an active Public Information Program supported by special funds raised for that purpose.

These funds are raised by the National Industrial Information Committee, which is an independent group rather than a Committee of the N. A. M. It was conceived by several business leaders, who turned to the N. A. M. as the most logical agency to effectuate their plans for a program to tell the true story of Industry to the American people. The committee raises the funds which support the N. A. M. public education program and it is, as the contribution pledge forms states, "sponsored by the National Association of Manufacturers."

But its membership includes a number of business leaders who are not members of the N. A. M. and its policies are not subject to N. A. M. dictation, though in practice so far both groups have worked in complete harmony.

This program is designed to tell industry's story to the public on the premise that that which concerns the direct and indirect livelihood of our whole population is too vital to be misunderstood.

*Keynote of public-information program.*—The keynote of this entire Public Information Program as it was conceived in 1934, and carried forward since then is presented in the first issue of Industrial Press Service, March 6, 1934, when a note to editors of weekly newspapers included the following statement :

"Nothing, we believe, is more important than that the people should know what is going on in the changing relationship between government and industry. This news service will candidly attempt to reflect the viewpoint of industry as a whole without regard to particular companies. As the "News Spokesman" of the nation's manufacturers—large and small alike—it will be predicated upon one salient fact which we are confident will conform to your news policy—that industry through taxation pays the bills of government, and that without profits to industry there cannot be higher wages and lasting prosperity."

The heart and soul of this program is that it is built around a constructive, affirmative story of industry and is intended simply to disseminate facts that for so many years there was no effort to spread. It is not political and is not anti-anything, but is simply pro-industry. It is a legitimate exercise of the right of free speech.



The general theme of the entire program is probably best presented in a series of eight booklets entitled the "You and Industry Library" which covers the following points:

1. AMERICAN WAY—An explanation of how our system operates.
2. MEN AND MACHINES—Showing that machinery does not destroy jobs, but makes them.
3. TAXES AND YOU—How taxes affect everyone in his daily life.
4. THE AMERICAN STANDARD OF LIVING—A discussion of the American standard of living—the highest in the world.
5. THE FUTURE IN AMERICA—A forecast of America's "tomorrow"; convincing evidence that this is still the land of opportunity.
6. AT SCHOOL—NOT AT WORK—A factual study of how American industry has freed our children from the jobs they used to fill.
7. PATTERN OF PROGRESS—Tracing the growth of a typical American business.
8. WHAT IS INDUSTRY?—Industry's role in the every-day life of Americans.

Under these general topical heads falls most of our material, which is reiterated through radio programs, motion pictures, newspaper releases and other media. A complete analysis of this material and its distribution has been furnished your staff and I am afraid that it would take too much of your time to go into the subject in detail now. However a general outline of the N. A. M. public information program is necessary to an understanding of the Association's activities and I shall try to give it to you in a few minutes.

N. A. M. radio programs include the AMERICAN FAMILY ROBINSON, which is an electrical transcription distributed regularly to *radio stations which request it*. The programs themselves are dramatic sketches built around the life of a small-town newspaper editor, and each contains a brief discussion of some phase of our American industrial and economic life. Other radio programs are a series of electrical transcriptions featuring George E. Sokolsky in weekly 15 minute talks and interviews with leading industrialists and foreign language transcriptions in six languages on timely topics. The association also arranges for radio speeches by its members and by members of its staff.

In addition to the Industrial Press Service to weekly newspapers, a cartoon service goes to a similar group, although to a smaller number of papers. Daily papers subscribe to "Uncle Abner Says," a humorous feature. "The Voice of American Industry" is a bulletin going periodically to editorial writers which presents Industry's viewpoint on issues affecting manufacturers. A foreign language news and editorial service in four languages is also distributed. In addition to these services, the Association issues spot news releases to daily papers and press associations on important questions of industrial policy.

Another service to daily papers is "You and Your Nation's Affairs," a column written by six economists. This service is distributed by an organization known as the Six Star Service. As the Service states on the proofsheet, "Six Star Service and not the National Association of Manufacturers selected our writing staff. The Association never sees any of our material until after release. The opinions expressed by these writers are their own opinions and do not necessarily represent the views of the National Association of Manufacturers, which organization defrays the cost of the services."

Two new ten-minute talking motion pictures, supplementing two made last year, have recently been released and are being shown in theatres throughout the country. These, like the radio transcriptions, are distributed to theatres free of charge to them or payment to us, *but only upon their request*.

A series of three new outdoor advertisements, based upon the theme, "What's Good for Industry is Good for You," is now appearing throughout the country, sponsored by the N. A. M., which paid for the preparation and printing of the posters. The billboard space is provided through the cooperation of the outdoor advertising companies who believe in this work.

The N. A. M. maintains a Speaker's Bureau which acts as a clearing house for the many requests from organizations requesting speakers to present Industry's side of current questions.

The primary audience for this program is the general public, but different projects are focused upon particular groups in America such as employees, shareholders, professional groups and others, with the intention of explaining to them more about the workings of the American industrial system. Particularly has it been felt essential to present to employees some of the

vital facts about industry, for we can only have a healthy, wholesome, prosperous nation when there is understanding among those who make up industry—employees, management, and capital.

This information program for employers includes "Industrial Facts," a bulletin for foremen and junior executives, sound slide films for showing before employee groups, including two films on safety, and a service for plan publications. Leaflets and bulletin-board posters also are available to manufacturers who desire to use them.

We have the fullest evidence that workers are looking for facts and desire to be informed of what is going on in the world today affecting their welfare. This has been repeatedly shown in the reaction to material distributed. It is even more graphically shown by the survey of thinking among factory workers of the country which revealed that 73% of those interviewed replied that they wanted their employers to give them such information. For example, 73.4% wanted to be told about business conditions, 68% wanted to be told about wages and hours legislation, 52% about taxes.

It should be pointed out that this is in no wise a campaign of subterfuge or hidden propaganda. It is based upon facts and logic, openly and frankly presented, with no effort to conceal the name of the National Association of Manufacturers and the National Industrial Council as the source of the material. For we believe that industry not only has the right to speak for itself, but there shall be a better understanding of its operations, but that it has a duty to present these facts.

"That enormous sums have been spent for years by many groups, some of them radical extremists, to discredit industry and the capitalistic system is well known. That manufacturers should continue to let this type of propaganda permeate the country with no attempt to counteract it was unthinkable. For instance, the Communist Party in America, devoted to the abolition of the capitalistic system, has long operated its own newspaper in the east and boasts openly of its activities throughout the country. It was recently engaged in a \$500,000 fund-raising campaign to start a second newspaper in Chicago, and expected later to launch one on the Pacific Coast.

That our program has been carried forward on a high, constructive, patriotic basis is plainly evident from the usage of the material by newspapers, radio stations, motion picture houses, and schools. This widespread urge is graphically depicted in the break-down by states which is attached as an exhibit to this memorandum.

It should be pointed out also that the various regular services to newspapers, radio stations, theaters, school, etc., are conducted on a request basis. For instance, each of the 5,900 weekly newspapers subscribing to Industrial Press Service has requested that this service be sent, and each has been asked on a number of occasions whether it wished to continue receiving the service. Material for schools such as booklets, debate material, motion pictures and sound slide films is offered through samples or literature and is sent upon request."

*Community Program.*—In view of certain changes contained in the Interim Report of the Committee (Senate Report 46, Part 4) the following testimony relating to this phase of the public information program is recalled to the attention of the Committee (Record pp. 7865-7867):

"The community program service has been a natural outgrowth of the attempt to stimulate all industry into becoming vocal in carrying its story to the public. From the very inception of the Public Information Program in 1934 a great part of the effort has been devoted to bringing forcefully before every individual manufacturer the idea that he himself has an obligation to participate in this work and help spread the story of industry, just as others have spread the story attacking it. Hence the community programs were launched upon the simple keynote of individual businessmen in each community joining together to tell their local story to their neighbors about their plants. Probably the strongest appeal of this program to local manufacturers lay in the statement repeated over and over again to them as in the community program skit presented as a promotional idea at our last convention, as follows:

'Disabuse your mind that this program is anti-C. I. O., anti-A. F. of L., anti-any-political party. Keep constantly in your mind that it is only an effort to tell your constructive story of your local industries to your neighbors.'

(A copy of this skit is attached as Exhibit "A".)

"This keynote is further carried out in the series of twelve Harmony advertisements that have been used in hundreds of cities.

"These are designed as a long-range project to promote understanding and cooperation between workers, management, and the public.

"The art work and idea for the campaign was first conceived by the MacDonald-Cook Advertising Agency. Later the N. A. M. purchased the rights to the ads and after revising them to conform exactly to our own policies, we released them to newspapers with the understanding that the N. A. M. would supply the mats for the advertisement but that the cost of inserting must be raised in the local community.

"These advertisements tell the story of the part industry plays in the life of the community. That is the basis of all features of the community program.

"Attached as appendix G is correspondence with Mr. William Frew Long of Associated Industries of Cleveland, his letter dated January 28, 1937, and the reply of Mr. Selvage, dated February 1. It will be noted that this was one of the first detailed letters written on the community program, that Cleveland was later changed to Smithtown to make it general, and that this presents fully the conception of work to be done under the community program.

"Attached as appendix H is a letter written by Mr. Selvage to the editor of the Flemington (N. J.) Democrat, in which the National Association of Manufacturers' conception of a community program as a community builder is again presented. In this instance, the intention was to make a laboratory experiment which if successful could be passed along to other communities.

"Attached as appendix I is a letter written by Mr. Selvage to Mr. Bischoff who was working on the Richmond, Ind., community program. It will be noted from this letter that the suggestion of the National Association of Manufacturers was that one of the first activities of the Richmond community group might be to work with the local relief agency with the idea of stimulating reemployment and perhaps setting up vocational training courses to develop skilled men. Here again the intent of the community programs to build a better city is plainly shown and another laboratory test of an idea which could be transmitted to other communities was sought.

"This community program stimulation has been carried forward through direct mail almost entirely, with the Outline of Organization and Operation of a Community Program and the chart presenting a suggested community program as the backbone of this direct-mail campaign. As interest was aroused in any community, the man who was assigned to the promotion of these programs (there was but one) went there and attempted to activate the process by explaining the simple A B C's of the procedure. Sometimes the program has been launched as a part of a chamber of commerce, other times as a part of another existent association, and other times as a new group. It has always been recommended, however, by the N. A. M. that the program be announced publicly so that there could be no hint of a surreptitious movement. Since a community program is built around the idea of cooperating with newspapers, radio stations, and other outlets, as well as ministers, teachers, and other leaders in the community, it obviously was necessary to pitch the activity upon a high constructive plane of bringing understanding and prosperity in the town.

"It will be noted that throughout the promotion of the community program idea the accent was on urging these groups to use the material prepared for distribution by the N. A. M., including motion pictures, slide films, advertisements, You and Industry series, etc. It is possible, therefore, by summarizing the material presented through these various media to obtain an accurate cross section of the viewpoint which was to be disseminated in each locality."

There was no connection, and none was established by the Committee, between this community program of the N. A. M. and activities of so-called "citizens committees" formed or operated in connection with current labor disputes.

#### NATIONAL INDUSTRIAL COUNCIL

At various stages throughout the hearings the Committee investigated the National Industrial Council and its relation to the N. A. M. While no charge has been made that the organization has engaged in or promoted any improper or unlawful activities with respect to matters within the scope of this investigation



or otherwise, we desire to restore for the record the testimony of Walter B. Weisenburger with reference to the Council (Record, pp. 7851-7853) :

"The National Industrial Council, organized in 1907 and reorganized in 1936, is a conference group of 33 state industrial associations, 85 industrial (labor) relations organizations (mostly city-wide associations) and 78 national manufacturing trade associations. It is sponsored by the National Association of Manufacturers, and maintains offices in the quarters of the Association both in New York and Washington. It is staffed by a Managing Director in Washington and a Secretary in New York, both of whom are supplied to the Council by the N. A. M.

"The organizations thus associated agree to have their executive officers get together to review experiences, discuss legislative measures and public policies affecting manufacturers, and through this clearing house of opinion to help clarify industrial thinking as represented in all industrial groups over the country.

"By no reach of the imagination can the Council be considered a 'super-body', since it exercises no control over N. A. M. affairs. Nor, on the other hand, can it be termed a subsidiary or subordinate, since all affiliates exercise complete autonomy in all their affairs. It is simply a conference group for discussion purposes and does not form policies binding on any person or group.

"All organizations are assured in advance of affiliation that they will not be called upon to commit themselves at their conferences. Naturally, the officers could not agree to 'vote their association' on matters which in many cases have not been acted upon by their memberships or governing bodies.

"During the interim between full or regional meetings of the Council, advisory committees of each of its three divisions meet as the occasion warrants. These advisory groups, like the main body from which they spring, have no policy-forming powers and meet merely to keep informed on matters affecting industrial welfare. The personnel of these advisory committees already has been submitted to your Committee.

"A booklet describing the Council and its purposes in greater detail is attached as Appendix A."

#### CONCLUSION

Aside from those charges made in the Committee's Interim Report (Senate Report No. 46, pt. 4), published by the Committee without notice to the N. A. M. that such charges were being made and without affording this Association with any opportunity whatever to meet such charges, we have not been advised by the Committee of any complaint or allegation that activities or policies of the N. A. M. are either designed to or have had the effect of impairing or interfering with civil rights or civil liberties of others.

Consequently the material submitted herein is intended to present the facts concerning many activities and policies of the N. A. M. subjected to scrutiny by the Committee. We believe the facts presented are supported not only by the evidence adduced at the hearings, but also by all the information and material furnished to your investigators and not included in the record. If it should develop, however, that additional charges should be made against this Association, in subsequent reports of your Committee or otherwise, we of course reserve the right to contest those we believe unfounded or unjustified by the investigation.

Respectfully submitted,

WALTER B. WEISENBURGER,  
*Executive Vice President, National Association of Manufacturers.*

#### AFFIDAVIT

STATE OF NEW YORK,

*County of New York, ss:*

Walter B. Weisenburger, being duly sworn, deposes and says that he is Executive Vice President of the National Association of Manufacturers, that he has read and subscribed to the foregoing statement; that as to matters of fact therein of which he has personal knowledge, he avers such facts to be true, and as to other matters therein stated he is informed and believes, and upon such information and belief avers that such statements are true to the best of his knowledge and belief.

WALTER B. WEISENBURGER.

Subscribed and sworn to before me this 26th day of January, A. D. 1939.

[SEAL]

SOPHIA JANOFF, *Notary.*

## AFTERNOON SESSION

Senator MURRAY. The committee will please come to order.

Mr. Mitchell is the first witness this afternoon.

I wish to announce that Senators Thomas, Pepper, Taft, and Smith serve also on the Foreign Relations Committee and they are having an important meeting this afternoon and they will not be able to be present.

You may state your full name and the organization you represent.

**STATEMENT OF H. A. MITCHELL, PRESIDENT, NATIONAL FARM  
LABOR UNION, AMERICAN FEDERATION OF LABOR**

Mr. MITCHELL. I am H. A. Mitchell, president of the National Farm Labor Union and affiliated with the American Federation of Labor. I have a statement that I would like to present.

Mr. Chairman and members of the committee, I wish to call attention of the committee to the use of the Taft-Hartley Act by the general counsel of the National Labor Relations Board—

Senator DONNELL. Would the gentleman identify himself completely for the record, as to whom he represents, and so forth?

Senator MURRAY. Very well. He has already stated that he represents the National Farm Labor Union.

Mr. MITCHELL. Yes, sir.

Senator DONNELL. That is affiliated with the American Federation of Labor?

Mr. MITCHELL. That is right.

Senator DONNELL. I may want to ask him a few questions later on, but go ahead now.

Senator MURRAY. Are you associated with any other organizations?

Mr. MITCHELL. No; not at all.

Senator MURRAY. What is your official position?

Mr. MITCHELL. I am president of the union.

Senator MURRAY. You may proceed.

Mr. MITCHELL. I wish to call the attention of the committee to the use of the Taft-Hartley Act by the general counsel of the National Labor Relations Board to break a strike of agricultural workers in behalf of the Di Giorgio Fruit Corp., in Kern County, Calif., although the law specifically states that none of the provisions shall apply to any agricultural worker.

Early in 1947 a group of workers employed by the Di Giorgio Fruit Corp. ranch which covers 18 square miles, began organizing. After the local union which was chartered by the National Farm Labor Union, an affiliate of the American Federation of Labor, had a majority of the workers employed on the ranch in its ranks (858 paid members out of a total labor force of 1,345 employees), they sought a meeting with officials of the corporation to discuss their grievances. These grievances on the big ranch, which is one of 102,136 large farm units in the United States that produce 24.2 percent of all farm production and is classified by the agricultural census reports as class I commercial farms, were similar to those in a factory. Indeed the Di Giorgio Fruit Corp. is a typical example of the factory-in-the-field type of farm production.

The grievances of the workers consisted in part of the following: a large group of employees who were skilled irrigators were on duty 12 hours per day but was paid for only 11 hours of work with no overtime. Men and women workers were ordered to report to ranch headquarters each day for work. Often they would be held for 4 hours or more and then told that there was no work for them. Others might be hired and work a shift of 18 hours.

Some workers reported having worked 24 hours straight without any sort of premium pay. Field foremen on the ranch had the right to hire and fire at will, regardless of the length of time a worker might have been with the corporation.

These and other conditions led to the formation of the union on the ranch and an attempt to adjust the conditions. Following the refusal of the corporation officials to meet with a committee representing their employees, the Kern County Central Labor Council intervened in an effort to secure a settlement of the controversy, but without success. A direct appeal was made to Mr. Joseph Di Giorgio, the head of the corporation whose operations extend throughout the United States. Mr. Di Giorgio owns the Baltimore Fruit Exchange, the majority of the stock in the New York Fruit Exchange, and either controls or influences the fresh fruit and vegetable markets of the principal cities of the country. His corporation has large holdings of land in California and Florida and owns packing sheds and the largest winery in the world. He has always been considered a fair employer, having dealings with other A. F. of L. unions on an amicable basis.

But Mr. Di Giorgio never replied to the registered letter sent to him by the union. On October 1, 1947, the union members walked out on strike. Over 1,100 workers out of 1,345 stopped work. A group of Mexican nationals under contracts were forced to return to work after threats of deportation by officials of the Department of Agriculture. Picket lines were set up about the ranch and the longest strike of farm workers in American labor history got under way.

An appeal was made to both Federal and State mediation services. The Federal and State conciliation services arranged a meeting and the unions involved appeared. The corporation sent a letter saying that there was no dispute between the corporation and any union of its employees, and for that reason they did not plan to attend.

The Di Giorgio Corp. began recruiting strike-breakers from the slums of nearby cities. A large number of native-born citizens of Mexican descent were brought in from El Paso, Tex. The Americans were none too satisfactory so the corporation began a systematic recruitment of illegal aliens from old Mexico, smuggling them in under cover of darkness.

The workers on strike were most resentful of this move to replace them with Mexican "wetbacks". The union kept firm discipline, showing the workers they could never win if they engaged in violence.

The corporation made one attempt after another to incite the native Americans to riot. Thirty-six families living on the ranch were evicted after the corporation refused to accept payment of the rent on their houses. Three pickets were beaten up by a mob of strike-breakers led by the personnel director of the Di Giorgio Fruit Corp.

On the night of May 17, 1948, there was an attempt to wipe out the entire leadership of the local union with gunfire. Unknown gunmen



fired into a peaceful meeting being held in a private home in the town of Arvin, near the Di Giorgio ranch. James B. Price, president of the local union, was shot down and for weeks there was little hope that he would recover. Although he has partially recovered, he was injured for life. It was significant that when Price lay wounded waiting for an ambulance, a telephone call was made to the corporation's doctor asking him to come and render first aid. He refused to do so. The gunmen have never been found although the State of California made investigations and offered rewards.

Between raids by the Immigration Service which apprehended aliens on the ranch, the Di Giorgio Fruit Corp. managed to produce a crop with scab labor and began shipping it to market. Union pickets followed the trucks of produce and rode tank cars of wine to their destination, and there appealed to other A. F. of L. union members to refuse to handle the products. This action was most effective.

The Di Giorgio Fruit Corp. appealed to the National Labor Relations Board for an injunction, alleging a secondary boycott by our local union, two locals of the teamsters international, and a local of the Wine and Distillery Workers International Union. On Independence Day, July 4, our members were notified that the Federal court in Fresno had issued an injunction prohibiting them from securing the help of other union men and women in refusing to handle the products of the strikebreaking corporation. Through some hodge-podge of legalistic reason, an attorney for the National Labor Relations Board convinced the court that although agricultural workers were barred from any of the benefits of the Taft-Hartley Act, its penalties applied to them. I think it was on the basis that the local union, although composed of farm workers, was affiliated with a recognized labor union and that such an injunction would be legal. After this action by the Board in taking jurisdiction in the strike, the attorney for the union advised that the local should file unfair labor charges against the employer and petition for an election to determine the bargaining agent. These were promptly dismissed by the regional board since the law said agricultural workers were not covered. The decision was upheld on an appeal to the National Board.

Long and costly litigation with hearings by the NLRB in Los Angeles lasting several weeks were held on whether the injunction was to be made permanent. During the course of the public hearings on the injunction matter, attorneys for the unions charged that the plan to break the strike through the use of an injunction was plotted in the office of the general counsel of the Labor Board with corporation officials. This charge has not been denied. No final decision has been rendered by the Board as yet.

The strike still goes on in spite of set-backs. There is a picket line on the Di Giorgio ranch in Kern County, Calif., today, and our people are determined to keep it there until such unfair laws as the Taft-Hartley Act are repealed and their rights as free American citizens are recognized.

Even though they are barred from all the benefits of the Taft-Hartley Act, members of the National Farm Labor Union have been victimized by application of its penalties. We have found that the law is a two-edged sword that cuts both ways for the benefit of the employer. We therefore urge your committee to repeal the Taft-

Hartley Act and reenact the Wagner Labor Relations Act with amendments such as were recommended by President Truman.

That completes my statement, Mr. Chairman.

Senator MURRAY. Is there any cross-examination?

Senator HUMPHREY. Is Mr. Mosher coming back again, Mr. Chairman?

Senator MURRAY. I do not understand that he is. I inquired at the time if there was any further examination, or whether we should recall him.

Senator HUMPHREY. I had to leave about 12:30. I had prepared for about a week to interrogate Mr. Mosher. I had hoped he would be back here this afternoon.

Senator MURRAY. He might prepare a statement and file it for the record.

Senator HUMPHREY. I do not think I will get a statement that will help. I am sorry.

Senator MURRAY. Senator Hill.

Senator HILL. I heard, unfortunately, only the last part of your testimony, Mr. Mitchell. I judge, however, that this is a case of a union of farm workers?

Mr. MITCHELL. That is right.

Senator HILL. Denied any right of collective bargaining, or any of the benefits of the Taft-Hartley law?

Mr. MITCHELL. Correct.

Senator HILL. Yet enjoined under the provisions of the Taft-Hartley law?

Mr. MITCHELL. That is correct.

Senator HILL. In other words, your union was denied any benefits under the Taft-Hartley law, but it was subjected to the penalties of the Taft-Hartley law. Is that correct?

Mr. MITCHELL. That is a correct statement.

Senator HILL. I suppose you set out here all the facts?

Mr. MITCHELL. Yes, I did, as far as I could, and in detail so that you would have it for the record.

Senator HILL. Was this injunction filed against your union on the instructions of the general counsel of the Board?

Mr. MITCHELL. Yes, it was. It was filed by the attorneys for the National Labor Relations Board in that region, which I think has offices in San Francisco or Los Angeles.

Senator HILL. Acting no doubt under the directions of the general counsel of the National Labor Relations Board.

Mr. MITCHELL. That is right.

Senator HILL. Did you seek any benefits under the Taft-Hartley law?

Mr. MITCHELL. Not until this injunction provision was applied to us because we thought the law meant what it said, that none of the provisions of the act should apply to any agricultural worker. So we assumed that we were outside the act, and we were qualified—the national union was qualified, as having the Taft-Hartley affidavit enjoined.

Senator HILL. Afterward you did apply for benefits?

Mr. MITCHELL. After the injunction had been issued.

Senator HILL. Those benefits were denied?

Mr. MITCHELL. They were denied.

Senator MURRAY. Is there any further examination?

Senator NEELY. Who issued the injunction?

Mr. MITCHELL. Judge Peirson Hall, of the Fresno court, Fresno, Calif.

Senator NEELY. Has the matter to which the injunction pertained ever been determined?

Mr. MITCHELL. No. It is still pending. As far as I know the National Board, which has the final say-so, has not handed down a final decision on the injunction. But the injunction is there in effect, and has been since last July.

Senator DONNELL. Who has not handed down the final injunction?

Mr. MITCHELL. The Board, as I understand it, the National Labor Relations Board.

Senator NEELY. Do you concur in the conclusion to which I have been reluctantly impelled, that Mr. Denham, the general counsel, is a menace to peaceful relations between labor and capital, and that he ought promptly to be removed from office in behalf of the promotion of the general welfare?

Mr. MITCHELL. Senator, I would like to say this: Our convention in November of this year passed a resolution requesting President Truman to remove the general counsel, General Counsel Denham, because of his action in enforcing the law in this Di Giorgio case.

I do not know Mr. Denham, and I would not be in a position to say otherwise.

Senator NEELY. How does your organization feel about him now?

Mr. MITCHELL. We think President Truman should remove him, just as we thought in November.

Senator NEELY. I hope you will not fail to inform the President of that fact. I think his testimony should impel every union man and woman in the United States to demand his removal.

Senator DONNELL. With respect to Senator Neely, I would like to say very respectfully, and without any intention to ask that Senator Neely be debarred from expressing his opinion, as to this question of whether Mr. Denham should be removed or not, that is not the question before this committee. There has been no impeachment proceeding brought. We are trying to determine what sort of legislation should be introduced, and not what to do with Mr. Denham. I very calmly, I trust, protest against any consideration by this committee, or the taking of time to consider whether he should or should not be expelled from his office.

Senator NEELY. Mr. Chairman, I very respectfully protest. Senator Donnell spent 59 minutes framing a single question with a witness about matters that I considered irrelevant. He should be the last on earth to raise the question of relevancy.

Senator DONNELL. I would like to inquire who that witness was, and if the Senator will state here on his word that I used 59 minutes in framing a question.

Senator NEELY. Yes, sir. We timed you on it. You read page after page of the decision of the Supreme Court as a part of your question.

Senator DONNELL. To what witness?

Senator NEELY. In questioning one witness.



Senator DONNELL. Who was the witness?

Senator NEELY. I do not remember now which one of the many who have been examined that it was.

Senator DONNELL. I made a statement as to Attorney General Clark's opinion which I would say probably took an hour or more. That was while Mr. Tobin was on the stand, concerning the testimony of the evening before.

Senator NEELY. I think probably he was the witness.

Senator HILL. I notice you are president of the National Farm Labor Union. How many members do you have?

Mr. MITCHELL. We have 20,000 members.

Senator HUMPHREY. Mr. Mitchell, how much business does this corporation—the Di Giorgio Fruit Corp.—have each year?

Mr. MITCHELL. Around \$5,000,000 to \$7,000,000. I do not have the exact figures with me, but they are available, Senator, if you would like to have them.

Senator NEELY. Is it not one of the largest concerns of its kind in the United States?

Mr. MITCHELL. I think they are. I think the holdings of the entire corporation are worth about \$100,000,000.

Senator HUMPHREY. How long were you under the impact of the injunction?

Mr. MITCHELL. We are still under it, and have been since July 4.

Senator HUMPHREY. July 4?

Mr. MITCHELL. That is right.

Senator MURRAY. Is it a temporary injunction?

Mr. MITCHELL. A temporary injunction.

Senator HILL. A temporary injunction can be temporary for a good long time.

Mr. MITCHELL. It appears to be so.

Senator MURRAY. Any other questions?

Senator DONNELL. I would like to ask Mr. Mitchell some questions.

Mr. Mitchell, you say your organization has 20,000 members, or thereabouts.

Mr. MITCHELL. Yes, sir.

Senator DONNELL. And your organization is affiliated with the American Federation of Labor?

Mr. MITCHELL. That is right.

Senator DONNELL. Did you go over this testimony with Mr. William Green, the president of the American Federation of Labor?

Mr. MITCHELL. No; I did not.

Senator DONNELL. What is your background? Where did you live before you became connected with this National Farm Labor Union?

Mr. MITCHELL. I was born and raised in Tennessee, and lived in Arkansas, Mississippi, and worked on the farm most of my life, up until I was grown. I was in business for a short time. I had some stock, what was known as the Southern Tenant Farmers Union, an independent organization, which later became the National Farm Labor Union, and an affiliate of the American Federation of Labor.

Senator DONNELL. Is the Southern Tenant Farmers Union an organization which had quite a bit of history in Missouri a few years ago?

Mr. MITCHELL. Yes. We were in this situation down there.

Senator DONNELL. Southeast Missouri?

Mr. MITCHELL. That is right.

Senator DONNELL. Are you familiar with the facts of that matter?

Mr. MITCHELL. I am.

Senator DONNELL. Were you over there at the time?

Mr. MITCHELL. I was not directly in there; no.

Senator DONNELL. What is your profession? Have you been a farmer or professional man or what?

Mr. MITCHELL. I was a farm worker from the time I was eight years old on up until I finished my high school.

Senator DONNELL. A little louder, please.

Mr. MITCHELL. I say from the time I was 8 years old until I finished my high school I worked by the day as a farm worker on my father's and grandfather's place, as a helper. After following that I made some share crops. I know you know what share crops are.

Senator DONNELL. May I interrupt to ask you right there: Was this trouble of the Southern Tenant Farmers Union in southeast Missouri connected with that? Were the sharecroppers involved in that?

Mr. MITCHELL. They were.

Senator DONNELL. Go ahead. You say you did some sharecropping. Where did you do that?

Mr. MITCHELL. In Tennessee.

Senator DONNELL. How old were you at that time?

Mr. MITCHELL. I must have been about 22 or 23, the last crop that I made.

Senator DONNELL. How old are you now?

Mr. MITCHELL. I am 43.

Senator DONNELL. So that is about 20 years ago.

Mr. MITCHELL. That is right.

Senator DONNELL. That time, when you were in Tennessee, where did you go from there?

Mr. MITCHELL. I was over in Arkansas.

Senator DONNELL. What did you do there?

Mr. MITCHELL. I went there for the purpose of engaging in farming, but I did not like the conditions on those big plantations, so I managed to get into a little business. I had a dry-cleaning business which I operated for about 6 or 8 years.

Senator DONNELL. That would take you up to about 1936.

Mr. MITCHELL. Roughly, 1934.

Senator DONNELL. Where was that, what town?

Mr. MITCHELL. Tyronza, Ark.

Senator DONNELL. Very well.

Mr. MITCHELL. After that I assisted in the formation of this small union of sharecroppers in Arkansas.

Senator DONNELL. What year did you assist in the formation of that?

Mr. MITCHELL. 1934. I remember exactly: July 20, 1934, we set up the farmer organization.

Senator NEELY. Mr. Chairman, a point of order. It is manifestly irrelevant to the repeal of the Taft-Hartley law to discuss what happened 20 years ago.

Senator DONNELL. What was the date of the court decisions that you have read from relative to injunctions, Senator Neely?

Senator NEELY. Centuries subsequent to the origination of the injunction. I was talking about a man who has made a mockery of the Taft-Hartley Act. You said that was irrelevant. Consequently and certainly what this man did 20 years ago as a sharecropper cannot be relevant to the repeal of the Taft-Hartley Act enacted by the Eightieth Congress 2 years ago.

Senator DONNELL. I have no intention of shutting the Senator off. He has a perfect right to present any matter before this committee, and I have the same right. I made that clear, perfectly clear, in the record. You can examine the record.

Senator NEELY. I want Senator Donnell to have all the liberty that I demand for myself.

Senator DONNELL. Thank you, Senator.

In 1934 you formed the Southern Tenant Farmers Union?

Mr. MITCHELL. Yes, sir.

Senator DONNELL. That was formed in Arkansas?

Mr. MITCHELL. Yes, sir.

Senator DONNELL. And you extended over into southeast Missouri?

Mr. MITCHELL. Yes; and several other States: Mississippi, Oklahoma, and some members in Texas.

Senator DONNELL. A little louder, please, Mr. Mitchell.

Mr. MITCHELL. We had members in Texas, Oklahoma, Arkansas, and Tennessee. All in that cotton area.

Senator DONNELL. How long did you stay with that union?

Mr. MITCHELL. Up until 1944, I believe it was, when we changed the name to the National Farm Labor Union.

Senator DONNELL. Was it then affiliated with the American Federation of Labor?

Mr. MITCHELL. No. I think it was still independent when we changed the name.

Senator DONNELL. When did you become affiliated with the American Federation of Labor?

Mr. MITCHELL. August 1946.

Senator DONNELL. August of 1946?

Mr. MITCHELL. That is right.

Senator DONNELL. Have you been the head of it ever since that time?

Mr. MITCHELL. Well, I have been connected with it. I was secretary for the first 11 or 12 years. Different people served as president. I think it was in 1944 that I became president.

Senator DONNELL. You became president in 1944?

Mr. MITCHELL. Yes, sir.

Senator DONNELL. You have been with it ever since it became affiliated with the American Federation of Labor?

Mr. MITCHELL. Yes, sir; and before.

Senator DONNELL. In other words, the lines of business you have been in are farming, as you said, and then you ran this dry-cleaning business and then you were the organizer of the Southern Tenant Farmer group and you have been with that ever since that time?

Mr. MITCHELL. That is right.

Senator DONNELL. Then you changed the name to the National Farm Labor Union. Do you remember why you changed the name? Was it because it was a national organization rather than southern?



Mr. MITCHELL. That was one reason. Also because the system of share croppers was rapidly becoming a system of slave labor. We thought the farm labor was more descriptive of what we represented.

Senator DONNELL. You told us about this Di Giorgio Fruit Co. matter in California. Were you out there yourself during the progress of that trouble?

Mr. MITCHELL. No. I had representatives there. I was there on several occasions, I made a couple of trips out there.

Senator DONNELL. You made a number of trips out there?

Mr. MITCHELL. Yes.

Senator DONNELL. You said here, at one place in your statement :

Through some hodgepodge of legalistic reasoning an attorney for the National Labor Relations Board convinced the court that although agricultural workers were barred from any of the benefits of the Taft-Hartley Act, its penalties applied to them.

Mr. MITCHELL. Yes.

Senator DONNELL. Who was that attorney that gave that hodgepodge of legalistic reasoning?

Mr. MITCHELL. I have the name here.

Senator DONNELL. Was it Mr. Denham?

Mr. MITCHELL. No, sir.

Senator DONNELL. It was not Mr. Neely, over there?

Senator NEELY. It was not Senator Donnell?

Senator HILL. If it was not Mr. Denham, it was his agent.

Mr. MITCHELL. It was his agent at least.

Senator DONNELL. You have never been a lawyer, have you?

Mr. MITCHELL. No, sir.

Senator DONNELL. Have you ever studied law at all?

Mr. MITCHELL. Very little. I had a lot to do with it, though.

Senator DONNELL. You termed what this attorney did as a hodgepodge of legalistic reason?

Mr. MITCHELL. That is what it seemed like to me.

Senator DONNELL. That was in the United States district court?

Mr. MITCHELL. That is right.

Senator DONNELL. A Federal court over which Judge Peirson M. Hall presided? Is that right?

Mr. MITCHELL. That is right.

Senator DONNELL. The order of that court was signed by Judge Hall on July 15, 1948, was it not?

Mr. MITCHELL. Either July 4 or July 5.

Senator DONNELL. I have here July 15, and it is docketed on July 15, 1948, book No. 4, page 415. Do you know whether that is the order?

Mr. MITCHELL. I do not know, sir. I am not familiar with the court order.

Senator DONNELL. Did you take any appeal or did anybody take an appeal to the United States circuit court of appeals?

Mr. MITCHELL. Yes. We took the appeal to the next step, which our lawyers told us was to take it into the National Labor Relations Board, to appeal from that. They would make the final determination, as we understood it, or as I understood it.

Senator DONNELL. That was your understanding?

Mr. MITCHELL. That is right.

Senator DONNELL. Is there any provision that you know of in the Taft-Hartley law that authorizes an appeal to be taken from the United States district court to the National Labor Relations Board?

Mr. MITCHELL. I do not know, sir.

Senator DONNELL. Does the National Labor Relations Board overrule the court?

Mr. MITCHELL. Apparently the judge said that the facts would have to be determined as to whether the case would be a permanent injunction instead of just a temporary one.

Senator DONNELL. What I want to get—

Mr. MITCHELL. Then the Board held hearings that lasted some 3 weeks in Los Angeles on this case.

Senator DONNELL. That was in regard to whether or not there had been an unfair labor practice of any kind, was it not; that the Board was holding a hearing?

Mr. MITCHELL. As I understood it, it was to determine whether or not this injunction should be made permanent.

Senator DONNELL. Do you not think that is rather strange, Mr. Mitchell?

Mr. MITCHELL. The whole thing seems strange to me, sir.

Senator MURRAY. They had control over the general counsel. I suppose you assumed that they would exercise control, direct the general counsel to discontinue litigation. Is that what you thought?

Mr. MITCHELL. That is what I thought possibly was it.

Senator MURRAY. You thought they were assuming jurisdiction there improperly, and that by bringing it to the attention of the Board, the Board would direct the general counsel to discontinue his proceedings.

Mr. MITCHELL. That is what I thought.

Senator DONNELL. Mr. Mitchell, maybe I am all wrong on this, but it seems to me a little bit strange that an appeal from the United States district court would lie to a board down in Washington. In the normal course of conduct on appeal, an appeal from the district court, a Federal district court, lies to what we used to call the circuit court of appeals. I believe they left out part of that name now and call it the court of appeals, or the circuit court of appeals.

Anyway, it lies from the district court to the next higher Federal court, which is presided over by a number of judges.

Was any appeal taken to any upper Federal court by your organization or anybody representing it?

Mr. MITCHELL. Senator Donnell, all I know is that the lawyers advised first that we go through these hearings with the NLRB, that they prepare their records and get all the records—which cost over a thousand dollars—I remember that part of it—and that on the basis of that record we could still go into higher court and get an appeal. But so far we were then advised not to take the appeal to the court until the final action of the Board was taken on it.

Senator DONNELL. At any rate, so far as you know, no appeal has ever been taken from the judgment of the United States district court, Judge Peirson M. Hall, to the United States circuit court of appeals, or to any upper court. Is that right?

Mr. MITCHELL. No, it has not been taken, as far as I know.

Senator DONNELL. It has not been taken?

Mr. MITCHELL. That is right.

Senator DONNELL. Mr. Mitchell, is there not something on the other side of this case also that you have not told us here this afternoon? Was there not a very great controversy over whether or not there ever was any membership in the union by these people that you claimed to represent?

Mr. MITCHELL. We offered at numerous times to open our records to the employer or any impartial agency that wanted to come there and check the names of the people, check the receipt for their membership dues that they paid, and no one ever took us up on it.

Senator DONNELL. You offered to do that because you knew there was a controversy as to whether these people were members of your union. You knew that they claimed they were not members at all, did you not?

Mr. MITCHELL. They are all outside of the place, sir.

Senator DONNELL. Sir?

Mr. MITCHELL. They were all off the place. They were not working.

Senator DONNELL. I did not ask you that. I say, you knew that they were claiming they did not belong to your union, did you not, and that you had no right to represent them.

Mr. MITCHELL. I do not know that they made that claim, because they realized that practically the entire labor force walked out there on October 1.

Senator DONNELL. I cannot hear you, Mr. Mitchell. You have to speak more distinctly or louder. I cannot get what you say.

Mr. MITCHELL. I do not recall that there was any direct challenge to us that we did not represent so many people. We publicly made that statement at the beginning of the strike, that we represented these people, and that we would submit our records to any agency, Government, or any fair-minded group of citizens.

Senator DONNELL. Why did you make that offer if you did not know there was a contention made by these people that they did not belong to your union? Why did you come out with an offer like that if there was not any controversy?

Mr. MITCHELL. I will tell you why it was: In the first place, as I recall it, some of the officials of the Di Giorgio Fruit Corp. claimed these people were not employees of the corporation. We offered to check our membership records with his pay-roll record as of the date they went out on strike.

Senator DONNELL. Mr. Mitchell, let me read you something here, and ask you whether this refreshes your memory at all. I may say that this is being read to you from a statement which was sent to Senator Taft. Mr. Strobel gave it to Senator Taft in his office and requested permission to testify. I understand he is still in town. He is still willing to testify.

This statement gives this man's name as Hank Strobel, a farmer from Monterey County, Calif.

Mr. MITCHELL. No; I did not think so. I do not think so.

Senator DONNELL. Let me read it to you:

There is one other case that I think will be interesting to the committee because it does bring out the direct aid to agriculture afforded by the Taft-Hartley Act.

Senator MURRAY. What are you reading from?

Senator DONNELL. The statement from Mr. Hank Strobel, addressed to the chairman and members of the committee, which state-



ment was addressed to Senator Taft, and as to which Mr. Shroyer informs me now that Mr. Strobel is in Washington and willing to testify on this matter.

Senator MURRAY. Whom does Mr. Strobel purport to represent?

Senator DONNELL. He does not say he represents anybody. He says:

I am a farmer from Monterey County and have no source of income other than my farming operations.

Senator MURRAY. It seems to me that is subject to a point of relevancy, Senator Neely.

Senator HUMPHREY. Did Mr. Strobel write that?

Senator DONNELL. With the Senator's consent, I will read this portion to Mr. Mitchell and ask him if it refreshes his memory at all. I also offer to invite Mr. Strobel before this committee if we can get him here.

Senator HUMPHREY. Before you do that, I want Mr. Mosher, if you are going to get anybody else. I wish to put priority on any extra witnesses. Are we going to put this into the record? If so, we ought to know who Mr. Strobel is, and whom he represents.

Senator DONNELL. I just answered that. He is a farmer from Monterey County, according to this statement. I never met Mr. Strobel. I do not know that he represents anybody. I see nothing here to indicate that. I have not read his statement except this part.

Mr. MITCHELL. I do not know Mr. Strobel. But I wonder if he is a representative or member of the Associated Farmers of California, Inc.

Senator DONNELL. I do not know. I would be willing to try to bring him here if we can get him.

Senator HUMPHREY. Second to my request.

Senator DONNELL. He says:

This case is the so-called strike on the Di Giorgio Farms in Kern County.

That is where this was?

Mr. MITCHELL. That is right.

Senator DONNELL (reading):

I say "so-called strike" because, of some 1,200 or 1,500 workers involved, only about 25 or 30 actual workers left Mr. Di Giorgio's employ and joined the picket line when this strike was called by Hank Haziwar.

That is an appropriate name. Do you know Hank Haziwar?

Mr. MITCHELL. Yes. He is my representative.

Senator DONNELL. Did he call the strike at your direction?

Mr. MITCHELL. No. The strike was called at the direction of a membership vote of the people, the employees of the Di Giorgio Corp., some seven or eight hundred of them present at a meeting, and the sheriff of the county and several other officials out there during the time they took the ballot on it.

Senator DONNELL. I am coming to the sheriff now:

\* \* \* joined the picket line when this strike was called by Hank Haziwar, western representative for the National Farm Labor Union, American Federation of Labor, upon refusal of Mr. Di Giorgio to discuss with him and negotiate a closed shop contract covering his employees. Some 1,250 of these employees—which was the entire number employed on that particular day—signed a letter, presenting it to the sheriff of Kern County, Calif., saying they were not members of this union and had no intention of becoming members, and petitioning the

sheriff to stop interference with them while entering and leaving the ranch to carry on their work.

Did you hear about that letter to the sheriff?

Mr. MITCHELL. No, sir; I did not. The sheriff must have kept it mighty quiet because nothing appeared in the newspapers out there.

Senator DONNELL. You never heard of it until now?

Mr. MITCHELL. Yes, sir; that is right.

Senator DONNELL (reading):

Later, when products from this ranch began to flow to market, the union attempted to invoke "hot cargo" and secondary boycott bans as far away as New York City.

Is that true?

Mr. MITCHELL. No.

Senator DONNELL. It is not?

Mr. MITCHELL. No, sir.

Senator DONNELL (reading):

In one particular instance where bulk wine was transported from this ranch to the Swiss-Italian Winery in the Fresno area, picket lines were thrown around the winery and across the railroad tracks into the winery, in an attempt to halt the movement of this wine to the winery. Mr. Di Giorgio petitioned the National Labor Relations Board under the provisions of the Taft-Hartley law, charging the union with violation of same. The National Labor Relations Board made an investigation and petitioned the courts for an injunction prohibiting the unions from interfering with the movement of all products from this ranch. This order was signed by the United States District Judge, Peirson M. Hall, on July 15, 1948, docketed on July 15, 1948, Book No. 4, page 415.

Does that recall to your mind, Mr. Mitchell, that there was very considerable controversy out there as to whether any of these people that you claim to represent belonged to your union at all or want to belong to it?

Senator HUMPHREY. Are you reading from Mr. Strobel's statement?

Senator DONNELL. Yes, sir, and offering to produce him.

Senator HUMPHREY. What was that last part as to docket?

Senator DONNELL. Book 4, page 415. That would be the court record.

Senator HUMPHREY. Yes.

Senator DONNELL. Do you want me to read that sentence again? Here is the case right here.

Senator HUMPHREY. All I am thinking about is that we do not know anything about Mr. Strobel, yet he suddenly comes up with a very legalistic pronouncement here.

Senator DONNELL. Mr. Shroyer calls to my attention, N22LRRM at page 2435, a case of *LeBaron v. Kern County Farm Union*. Is that the same one?

Mr. THOMAS E. SHROYER. The facts as I read them in the case are the same.

Senator DONNELL. This is a different judge. This is Judge Hall. I am wondering if this is the same identical case. Do you know?

Mr. SHROYER. No, sir; I do not know.

Senator DONNELL. Yes; it is the same case. This case right here is the *LeBaron* that I am reading from here, *LeBaron v. Kern County Farm Union*, United States District Court, Southern District of California. The date of it is July 14, 1948, and District Judge Hall's opinion is set forth in full here. I have not read a line of it yet, but

here it is. It runs page after page here, and injunctive relief is granted. That is the case I judge we are talking about here. I see Di Giorgio's name, and the fruit corporation, and the National Farm Labor Union.

That is the case, is it not, Mr. Mitchell?

Mr. MITCHELL. It sounds like it.

Senator DONNELL. Yes; it does. That is the case, then, that you have not taken any appeal to the United States district court of appeals as to the action taken by the judge. That is right, is it not?

Mr. MITCHELL. That is right. I did not get the last question. You asked me some questions that were not quite clear.

Senator DONNELL. What is it that was not clear? If there is a further statement, go right ahead.

Mr. MITCHELL. I do not know Mr. Strobel or anything about him.

Senator NEELY. Please talk louder.

Senator DONNELL. I can hardly hear him myself.

Mr. MITCHELL. I do not know Mr. Strobel or anything about his connections. I know there was a great number of statements and counterstatements made by different people in connection with the strike. The first day of the strike there was the president of the Associated Farmers of California, which is the one I believe that this committee some years ago exposed as denying the people civil rights, civil liberties, throughout California. They immediately came to the defense of Mr. Di Giorgio.

Senator DONNELL. Who did?

Mr. MITCHELL. The Associated Farmers of California, Inc. They were issuing statements by the publicity man down there, accusing us of this and that, and not representing people. I have a stack of newspaper clippings that high [indicating].

Senator DONNELL. How high is that?

Mr. MITCHELL. About that high [indicating].

Senator DONNELL. That would be about a foot and a half or 2 feet. All right, go ahead.

Mr. Mitchell, I just noticed one or two very interesting things here. District Judge Hall said that the case came on to be heard on the verified petition of Howard F. LeBaron, regional director of the twenty-first region of the National Labor Relations Board. Do you remember him?

Mr. MITCHELL. His name sounds familiar. I do not know him.

Senator DONNELL. It says:

Respondent's motion—

that is your organization—

to dismiss the petition, to make the petition more definite and certain, and for a bill of particulars were heard on July 1, 1948, and denied on the same day.

I am reading what Judge Hall said.

Hearing on the rule to show cause were held on July 1, 2, and 3, 1948. All parties were afforded full opportunity to be heard, examine and cross-examine witnesses, present evidence bearing on the issues, and to argue on the evidence and the law. The court has fully considered the petition, the respective answers of respondents, evidence, briefs, and argument of counsel.

Were you there when that trial was going on?

Mr. MITCHELL. I was not there.



Senator DONNELL. I do not want to take too much time here, but I will note in the record, as I have, this particular case. Then we get over to this question you were talking about as to whether this comes under the Taft-Hartley Act. I notice it says:

Union conduct: The court finds this—  
and then it continues—

On or about and after February 12, 1948, local 87—  
that is your local?

Mr. MITCHELL. That was the local of the teamsters.

Senator DONNELL. That is right. It says here:

Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, local 87, American Federation of Labor (herein called local 87), an unincorporated association, is a labor organization having its principal office within this judicial district and is engaged, and at all times material herein has been engaged, in promoting and protecting the interests of its employee members within this judicial district.

Here is another respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, local 848, American Federation of Labor.

There is your organization, American Federation of Labor, and two teamsters' organizations, American Federation of Labor, and then the respondent Distillery Rectifying and Wine Workers International Union, local 45, American Federation of Labor. All of your organizations were in this organization, were they not, as defendants?

Mr. MITCHELL. Yes, sir.

Senator DONNELL. Now, as to whether the Taft-Hartley Act applies, I observe here the court said with respect to union conduct that:

After said preliminary investigation there was on and prior to the 17th day of June 1948, and is now reasonable cause for petitioner to believe that: (a) On or about and after February 12, 1948, local 87—

that is the teamsters' international—

by orders, threat, threats of disciplinary proceedings, and threat that said employees would be suspended or expelled from local 87, and promises of benefits, issued or made by its agents to employees of the Oilfields Trucking, all of whom were and are members of local 87, induced and encouraged said employees of Oilfields Trucking to engage in a strike or a concerted refusal in the course of their employment to transport or otherwise handle or work on any goods, article, material, or commodities shipped or to be shipped to or by Wine Co., or to perform any services in connection with such shipment.

It says here that that Wine Co. is a California corporation affiliated with Fruit Corp., and engaged by Di Giorgio of California in the business of processing and storing of wine and grapes for the owners thereof. The court said that these people who were members of local 87 of the teamsters union were seeking—

to encourage said employees of the Oilfields Trucking to engage in a strike or a concerted refusal in the course of their employment to transport or otherwise handle or work on any goods, articles, materials, or commodities shipped or to be shipped to or by Wine Co., or to perform any services in connection with such shipment.

This goes on here for page after page, and I will not go into it. But the injunction was granted, or the temporary injunction. You said no appeal has been taken from it to the courts.

Senator NEELY. Does it show the date on which the temporary injunction was issued?

Senator DONNELL. I think it does. In the headnote it says July 14, 1948. Whether that is the date of the filing I do not know. That is the date of the injunction, I imagine, Senator, because hearings were held on the rule to show cause on July 1, 2, and 3, 1948. That is the only date that appears.

Senator HILL. Do you know what date the injunction was issued?

Mr. MITCHELL. It was my understanding it was on July 4. That is the date our people were notified.

Senator HILL. You mean Independence Day that you were notified, or enjoined?

Mr. MITCHELL. That is right.

Senator DONNELL. It interfered with the celebration of the 4th of July.

Mr. MITCHELL. I do not know whether the court actually signed the order that day.

Senator NEELY. It was a temporary injunction, in any event.

Senator DONNELL. Yes. Injunctive relief here, and it sets it out.

Did you have any attorneys there representing your organization?

Mr. MITCHELL. Yes. We had a very good organization.

Senator DONNELL. Who was the attorney that represented you?

Mr. MITCHELL. Mr. Alexander H. Schullman, an attorney from Los Angeles.

Senator DONNELL. I wonder why he does not appear here as representing your organization. I notice the appearances here are cited as follows—I have his name but he is not appearing for this gentleman's union according to this.

The petitioner was represented by Robert N. Denham—did you hear that, Senator Neely?

Senator NEELY. I should have expected him to be carrying the ball for the employer.

Senator DONNELL. And David P. Findling, who sat here the other day, and some other gentleman from Los Angeles, and here are the defendants for the defendants: V. P. Lucas.

Did he represent your firm?

Mr. MITCHELL. He was a representative of the teamsters, one of the locals.

Senator DONNELL. And Alexander Schullman, the man you said represented you.

Mr. MITCHELL. That is right.

Senator DONNELL. It does not say that here. It may say it somewhere down the line. The appearances say:

Alexander Schullman of Los Angeles, Calif., for respondent, Distillery, Rectifying, and Wine Workers International Union, Local 45, American Federation of Labor.

I wonder why it does not appear here that he was representing your organization. Do you know why it does not?

Mr. MITCHELL. I have not any idea. I know he was.

Senator DONNELL. Maybe he was, but this does not show it. At any rate, Mr. Mitchell, evidently we had some litigation out there, and according to this statement of Mr. Strobel the 1,250 of these employees claimed they did not belong to your union at all and had no intention of becoming members if Mr. Stroebel's statement is correct, and so stated in a letter presented to your old friend the sheriff of Kern County, Calif., that you referred to.

Mr. MITCHELL. The 1,250, they got the names of the people imported from Mexico and Texas, and put them on a letter. Such a document was presented in the House of Representatives last spring at some time, signed by a lot of Mexican names. It was put in the Record by a Congressman from California, from that district. I think there were a thousand or so names. They were people who had been imported following the calling of the strike. They had been brought in there as strikebreakers.

Senator DONNELL. Mr. Chairman, that is all I want to ask Mr. Mitchell. I would like to suggest that inasmuch as Mr. Di Giorgio's company has been brought in here in this matter and Mr. Mitchell has made all these charges about him, and one thing or another, that we ought to have permission for Mr. Di Giorgio, if he wants to, to file a statement—not trespass on the time of the committee to bring him in, but permit him to file a statement in the record at this point and I so move.

Senator MURRAY. The statement may be filed.

(Subject to being received, the statement will be found in the appendix.)

Senator MURRAY. If you wish to file any additional statement with reference to Mr. Di Giorgio and his organization, Mr. Mitchell, setting up any additional facts that would be helpful to us, we will be glad to have you do so.

Mr. MITCHELL. I will be happy to do so. There are several additional points there. I have some figures.

Senator MURRAY. If there are any reports on the activities of the Associated Farmers—is that what you call it?

Mr. MITCHELL. Yes, sir.

Senator MURRAY. In connection with this matter, you could make a statement on that also.

Mr. MITCHELL. Thank you very much. Some of it would have to come from California, because I do not have the complete records, and I will secure such data for you and submit it within the next week or 10 days.

Senator HILL. Mr. Mitchell, as I understood the statement of Mr. Strobel, only some 25 or 30 went out on strike. Is that right?

Mr. MITCHELL. No, sir.

Senator HILL. How many went out on strike, do you know, approximately?

Mr. MITCHELL. About 1,100.

Senator DONNELL. Mr. Mitchell, could you talk a little louder.

Mr. MITCHELL. About 1,100.

Senator HILL. When you say 1,100, there were two or three plants involved here. Were the 1,100 among several plants or one plant?

Mr. MITCHELL. This ranch covers 18 square miles. It has on it a winery and a big packing shed. And aside from about 15 or 20 workers that are in that winery who were members of the winery union, I do not know but there must have been 40 or 50 truck drivers that belonged to the teamsters union, all of whom quit work. The rest of them are members of the Kern County Farm Labor Union, local 218.

Senator HILL. Making a total of about 1,200?

Mr. MITCHELL. No. There were only 1,100 of the group, roughly that. At the time the strike was called we had 858 paid-up members



who were on that ranch in addition to the ones that belonged to the teamsters at the winery.

Senator HILL. Did practically all of your paid-up members of your union go out on strike?

Mr. MITCHELL. Yes, sir; and they are still out.

Maybe a couple of those may have gone back to work. I would like to say that they are small farmers in that community that hire these workers. We still have about 600 workers in that community, and they are still there, available for picket duty whenever they need them, and keep 25 or 30 men on the picket line now.

Senator MURRAY. Working for small farmers around the neighborhood?

Mr. MITCHELL. Yes, sir; working around the neighborhood.

Senator MURRAY. After the cross-examination by Senator Donnell, do you still feel that the Taft-Hartley Act is a bad law and ought to be repealed?

Mr. MITCHELL. Yes, sir. I could not feel anything else but that. We have been victimized by its operation. We have not received any benefits whatever.

Senator MURRAY. Very well.

Senator NEELY. Mr. Mitchell, you remember there was an effort made in the Seventy-ninth Congress that was led in the House by one or two California Congressmen to have the law amended so as to exempt all those who worked in canning factories and processing plants in California from the operation of the Wagner law, on the ground that these unemployed were farmers and agricultural workers and not industrial workers, and not subject to organization, and so on. Do you know whether the Di Giorgio Co. that was involved in this injunction was a party to that movement, or have you any information on that point?

Mr. MITCHELL. I do not, Senator. I do not know whether that exemption in the Seventy-ninth Congress applied to the workers who worked in his packing shed. There is some rule, as I understand it, that workers who work in the packing shed would process only the product grown on the farm and are not eligible to coverage under the present law.

Senator NEELY. That is all.

Senator MURRAY. Does that conclude your testimony?

Mr. MITCHELL. Yes, sir.

Senator MURRAY. Thank you, Mr. Mitchell.

Mr. MITCHELL. Thank you.

(The statement of Mr. Mitchell is as follows:)

STATEMENT OF H. L. MITCHELL, PRESIDENT, NATIONAL FARM LABOR UNION,  
A. F. of L.

I wish to call the attention of the committee to the use of the Taft-Hartley Act by the general counsel of the National Labor Relations Board to break a strike of agricultural workers in behalf of the Di Giorgio Fruit Corp. in Kern County, Calif., although the law specifically states that none of the provisions shall apply to any agricultural worker.

Early in 1947 a group of workers employed by the Di Giorgio Fruit Corp. ranch, which covers 18 square miles, began organizing. After the local union which was chartered by the National Farm Labor Union, an affiliate of the American Federation of Labor, had a majority of the workers employed on the ranch in its ranks (858 paid members out of a total labor force of 1,345 employees), they sought a meeting with officials of the corporation to discuss their grievances.

These grievances on the big ranch which is one of 102,136 large farm units in the United States that produce 24.2 percent of all farm production and is classified by the agricultural census reports as class I commercial farms, were similar to those in a factory. Indeed the Di Giorgio Fruit Corp. is a typical example of the factory-in-the-field type of farm production.

The grievances of the workers consisted in part of the following: A large group of employees who were skilled irrigators were on duty 12 hours per day but were paid for only 11 hours of work with no overtime. Men and women workers were ordered to report to ranch headquarters each day for work. Often they would be held for 4 hours or more and then told that there was no work for them. Others might be hired and work a shift of 18 hours. Some workers reported having worked 24 hours straight without any sort of premium pay. Field foremen on the ranch had the right to hire and fire at will, regardless of the length of time a worker might have been with the corporation. These and other conditions led to the formation of the union on the ranch and an attempt to adjust the conditions. Following the refusal of the corporation officials to meet with a committee representing their employees, the Kern County Central Labor Council intervened in an effort to secure a settlement of the controversy, but without success. A direct appeal was made to Mr. Joseph Di Giorgio, the head of the corporation whose operations extend throughout the United States. Mr. Di Giorgio owns the Baltimore Fruit Exchange, the majority of the stock in the New York Fruit Exchange, and either controls or influences the fresh fruit and vegetable markets of the principal cities of the country. His corporation has large holdings of land in California and Florida and owns packing sheds and the largest winery in the world. He had always been considered a fair employer, having dealings with other A. F. of L. unions on an amicable basis. But Mr. Di Giorgio never replied to the registered letter sent to him by the union. On October 1, 1947 the union members walked out on strike. Over 1,100 workers out of 1,345 stopped work. A group of Mexican nationals under contract were forced to return to work after threats of deportation by officials of the Department of Agriculture. Picket lines were set up about the ranch and the longest strike of farm workers in American labor history got under way.

An appeal was made to both Federal and State mediation services. The Federal and State conciliation services arranged a meeting and the unions involved appeared. The corporation sent a letter saying that there was no dispute between the corporation and any union of its employees and for that reason they did not plan to attend.

The Di Giorgio Corp. began recruiting strikebreakers from the slums of nearby cities. A large number of native-born citizens of Mexican descent were brought in from El Paso, Tex. The Americans were none too satisfactory so the corporation began a systematic recruitment of illegal aliens from old Mexico, smuggling them in under cover of darkness. The workers on strike were most resentful of this move to replace them with Mexican "wetbacks." The union kept firm discipline, showing the workers they could never win if they engaged in violence. The corporation made one attempt after another to incite the native Americans to riot. Thirty-six families living on the ranch were evicted after the corporation refused to accept payment of the rent on their houses. Three pickets were beaten up by a mob of strikebreakers led by the personnel director of the Di Giorgio Fruit Corp. On the night of May 17, 1948, there was an attempt to wipe out the entire leadership of the local union with gunfire. Unknown gunmen fired into a peaceful meeting being held in a private home in the town of Arvin, near the Di Giorgio ranch. James B. Price, president of the local union, was shot down and for weeks there was little hope that he would recover. Although he has partially recovered, he was injured for life. It was significant that when Price lay wounded waiting for an ambulance, a telephone call was made to the corporation's doctor asking him to come and render first aid. He refused to do so. The gunmen have never been found although the State of California made investigations and offered rewards.

Between raids by the Immigration Service which apprehended aliens on the ranch, the Di Giorgio Fruit Corp. managed to produce a crop with scab labor and began shipping it to market. Union pickets followed the trucks of produce and rode tank cars of wine to their destination, and there appealed to other A. F. of L. union members to refuse to handle the products. This action was most effective.

The Di Giorgio Fruit Corp. appealed to the National Labor Relations Board for an injunction, alleging a secondary boycott by our local union, two locals of the teamsters international, and a local of the Wine and Distillery Workers In-

ternational Union. On Independence Day, July 4, our members were notified that the Federal court in Fresno had issued an injunction prohibiting them from securing the help of other union men and women in refusing to handle the products of the strikebreaking corporation. Through some hodgepodge of legalistic reasoning, an attorney for the National Labor Relations Board convinced the court that although agricultural workers were barred from any of the benefits of the Taft-Hartley Act, its penalties applied to them. I think it was on the basis that the local union, although composed of farm workers, was affiliated with a recognized labor union and that such an injunction would be legal. After this action by the Board in taking jurisdiction in the strike, the attorney for the union advised that the local should file unfair labor charges against the employer and petition for an election to determine the bargaining agent. These were promptly dismissed by the regional board since the law said agricultural workers were not covered. The decision was upheld on an appeal to the National Board.

Long and costly litigation with hearings by the NLRB in Los Angeles lasting several weeks were held on whether the injunction was to be made permanent. During the course of the public hearings on the injunction matter, attorneys for injunction was plotted in the office of the general counsel of the Labor Board with the unions charged that the plan to break the strike through the use of an injunction was plotted in the office of the general counsel of the Labor Board with corporation officials. This charge has not been denied. No final decision has been rendered by the Board as yet.

The strike still goes on in spite of set-backs. There is a picket line on the Di Giorgio ranch in Kern County, Calif., today and other people are determined to keep it there until such unfair laws as the Taft-Hartley Act are repealed and their rights as free American citizens are recognized.

Even though they are barred from all the benefits of the Taft-Hartley Act, members of the National Farm Labor Union have been victimized by application of its penalties. We have found that the law is a two-edged sword that cuts both ways for the benefit of the employer. We therefore urge your committee to repeal the Taft-Hartley Act and reenact the Wagner Labor Relations Act with amendments such as were recommended by President Truman.

Senator MURRAY. Mr. Stanley W. Oliver.

Mr. Oliver, you may state your name and the name of the organization you represent.

**STATEMENT OF STANLEY W. OLIVER, PRESIDENT, INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS, ARCHITECTS, AND DRAFTSMEN, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR**

Mr. OLIVER. Senator Murray, my name is Stanley W. Oliver, and I am president of the International Federation of Technical Engineers, Architects, and Draftsmen.

We are an international union of technical engineers, architects, and draftsmen, and we are affiliated with the American Federation of Labor.

Senator MURRAY. Do the members of your organization act independently or are they employees in some organization or corporation?

Mr. OLIVER. All of our members are employees, sir.

Senator MURRAY. Employees in concerns that require technical engineers, architects, and draftsmen?

Mr. OLIVER. That is correct, sir. We do have members whom we do not claim to represent for collective bargaining but who are technical engineers and who work on a fee basis. They are members of our organization, because they are interested in promoting the welfare of other employees who are employed as engineers, architects, and draftsmen.

Senator MURRAY. You may proceed with your statement.



Mr. OLIVER. The membership which I represent is composed of technical and professional engineers, architects, scientists, as well as allied subprofessional workers employed throughout the United States and the Territories. About 20 percent of our members are employed in engineering capacities by various city, county, State, and Federal Governments, and the remaining 80 percent are employed in private industry. Most of these members are college graduates or have equivalent technical experience. Many are registered professional engineers under their respective State registration laws.

Before going further, I would like to point out that the organization I represent is a national organization of engineers, run by engineers and for engineers.

Most of our local sections, of which we have 50, are governed by officers who are employed engineers in their respective areas. We have very few full-time representatives, so that most of the business of our organization is conducted by engineers who serve the organization part time, either donating their time or receiving only small remuneration to cover their expenses. In other words, there can be no charge that the organization I represent is run by outside labor bosses of the sort often referred to by such columnists as Westbrook Pegler.

We are affiliated with the American Federation of Labor. We are proud of such affiliation. Such affiliation, however, does not mean that we are not a separate and distinct organization with complete autonomy and authority to manage our own affairs insofar as they affect the welfare of engineers. Many of the problems of engineering employees, however, are identical to those of other people who work for wages or salaries. This is true particularly of legislative matters—hence our affiliation with the American Federation of Labor is of great benefit to the engineering profession as a whole because of the assistance, cooperation, and coordination effected through that affiliation.

My purpose in appearing before you is to discuss those features of the present Labor-Management Relations Act which affect professional employees. I refer specifically to section 2 (12) and to section 9 (b) (1) of Public Law 101, Eightieth Congress.

Section 2 (12), which is a definition of the term "professional employees," states that—

(12) The term "professional employee" means—

(a) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) Any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 9 deals with representatives and elections. In subparagraph (b) of that section it is stated that—

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer

unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit.

The enactment of such legislation in 1947 placed a new definition on the word "professional," a definition designed to include far more than the three commonly referred to as the learned professions of theology, law, and medicine.

In the engineering world, professional engineers are those engineers who have been licensed under their respective State laws to offer their technical services to the public on a fee basis. These engineers, however, are not employees, do not have employer-employee relationships and, thus, should not be considered in any legislation designed to promote good labor-management relations.

There is another small group of upper-bracket engineers who probably consider themselves in a professional category, who are employed by large industrial firms on a consulting basis. With few exceptions, however, such engineers also have bona fide executive or administrative functions and they, also, should be excluded on the basis that they are definitely management personnel.

By "excluded" here, I mean they need not be mentioned in the bill. In other words, self-employed engineers as well as bona fide executives and administrators should not be named any more than bank presidents, for example, in legislation dealing with labor-management relations.

Thus, in the language of the engineering profession which I understand those engineers who are employees, whether college graduates or not, should be accorded the same treatment in relations with employers as all the other employees.

Many technical engineers, probably for reasons of personal ego, are prone to consider themselves in the same category with professional doctors, lawyers, dentists, and so forth. An analysis of this situation, however, reveals that not more than about 5 percent of all engineers ever become actively engaged in direct consulting engineering work on a professional-fee basis, and the remaining 95 percent serve their entire careers as employee engineers. The exact opposite is true, of course, in the case of professional doctors, lawyers, and dentists.

Prior to enactment of the Labor-Management Relations Act of 1947, no exclusion, either real or implied, existed for employees in technical categories, professional or nonprofessional. During the years of operation under the Wagner Act, however, the old National Labor Relations Board established the policy wherein technical engineering employees having similar conditions of employment, regardless of the degree of difficulty and educational background required for specific jobs, were all included in the same collective-bargaining units. The Board, on numerous occasions, excluded from such units nontechnical employees such as clerks, timekeepers, stenographers, typists, and so forth. Our organization accepted that arrangement as being the most practicable and desirable arrangement, from the standpoint of both employers and of employees for collective-bargaining purposes. Our organization does not seek to represent the nontechnical clerks and stenographers since, under the

American Federation of Labor, they belong with the Office Employees' International Union.

Under the old National Labor Relations Board a number of decisions were rendered establishing a precedent wherein technical and professional engineers and allied workers were grouped separately from clerical and production workers. Several examples are quoted as follows:

In the Chrysler Corp. case, the designing engineers were considered a homogeneous, professionally trained group, distinguished in function and training from clerical and production workers, on the one hand, and from electrical engineers, on the other. This group thus included: Body designers, including lead-off men, lay-out men, checkers, detailers, and beginners, engineering designers, including tracers as well as groups just mentioned; tool, special machine and die designers, including process engineers as well as the groups first mentioned, and except such who had authority to hire or discharge. All these were ruled to constitute an appropriate unit for purposes of bargaining.

In the Underwood Machinery Co. case, engineering department personnel were excluded from industrial unit of employees of special machinery and steel fabricating plant upon finding that engineers are college graduates and work on salary basis at much higher rate than production and maintenance employees, and that draftsmen are also technically trained for their positions and work under the same conditions as the engineers.

In the case of American Bridge Co., appropriate unit determined to consist of draftsmen, tracer draftsmen, squad leaders, and civil and mechanical engineers of structural steel and bridge fabricating plant.

A precedent for including all technical engineering employees in a single collective-bargaining unit has long been established on the railroads, administered under the Railway Labor Act. It is customary for the National Mediation Board to include in the same unit—

Technical engineers, architects, draftsmen, and allied workers, including such job titles as assistant engineer, instrumentmen, rodmen, chainmen, draftsmen, and other engineering and technical employees in the maintenance of way and structures, signal and mechanical departments of the carrier.

In this connection, the Railway Labor Act is customarily cited as an instrument of successful labor-management relations.

At the present time we have under contract technical engineers, architects, draftsmen, et cetera, earning wages varying all the way from a minimum of \$112 a month to well over \$600, covering the non-executive, nonadministrative positions. Those in the lower brackets, of course, are beginners—mostly high-school graduates who are in-service trainees learning to become draftsmen or engineering aides. Many of them later enter college for formal training and become qualified engineers. In the higher brackets many of our members have masters' and doctors' degrees.

In private industry, engineers employed in the design offices vary in numbers from a handful to several thousand or more. The salary levels in each office vary all the way from the minimum to the maximum figures quoted above, depending upon responsibility of the particular jobs and the education and experience required of the incumbents.



Prior to 1947, it was customary to consider all such engineering employees in an office as constituting a single bargaining unit, and contracts were negotiated both by our organization and by others, as well, customarily covering the entire group.

Since the passage of Public Law 101, however, the NLRB has had a mandate to draw a line through the engineering office to decide which of these people are professional and which are nonprofessional employees, and some of the jobs are necessarily border-line cases and may land on either side of the line.

Then, it is directed that the two groups thus formed be considered in separate negotiations. This is forced on the employer as well as the union and may work to the disadvantage of both.

Our experience has been that where formerly we encountered little trouble in carrying on peaceful and orderly negotiations with employers, division of the bargaining unit under Public Law 101 has served to encourage lengthy arguments with employers, resulting in lowered morale, less production, and general chaos in the very vital sections of the plants upon which direct production activities depend for satisfactory operation.

It has been the contention of our organization that the Congress should not pass legislation encouraging the division of logical bargaining units. Elimination of the language of section 2 (12) and that portion of section 9 dealing with professional employees is a proper solution to the problem. We believe that a reversion to the Wagner Act will work to the ultimate advantage of both engineers and employers. Such legislation would permit the National Labor Relations Board to render its decisions on the same basis that it did prior to 1947.

It is my understanding that a number of ill-advised engineers throughout the country have petitioned their Congressmen to oppose any legislation which would force engineers to join labor unions. Of course, the idea that anyone might propose such legislation is ridiculous. I might add, however, that I do not believe any worker should be forced to join a labor union any more than I believe anyone should be prohibited from joining a union of his choosing.

I believe in the right of self-determination by the majority in every case, and I believe that all employee engineers should enjoy that right of self-determination just as do other workers covered by the labor-management relations policy of the Federal Government.

On Monday, February 14, testimony was submitted to this committee by a representative of a number of professional engineering societies, Mr. E. Lawrence Chandler. In order that there may be no misapprehension in the minds of the committee members I would like to submit several observations regarding the professional societies.

I, myself, am a member of the American Institute of Electrical Engineers, one of the professional engineering societies which endorsed the statement presented by Mr. Chandler.

I have been a continuous and active member of the organization since I joined as a student engineer in 1935. As a matter of fact, in my senior year in college I was student chairman of the campus branch of the American Institute of Electrical Engineers.

I am here to say that without a single doubt, all of the technical progress which has been made in the field of electrical engineering in the United States—and for that matter in the whole world—is due

primarily to the activities of the American Institute of Electrical Engineers. The same thing may be said for the mechanical engineers, the civil engineers, and the other professional societies.

It is noteworthy, however, that the professional societies, interested primarily in advancement of technical progress in their respective fields, are, in the main, dominated by employer groups. The reason for this is quite obvious. Large corporations engaged in building or manufacturing engineered products are naturally interested in improving the quality of the goods they produce. Thus, they are interested in seeing the particular branch of engineering with which they are concerned advance to the highest possible level.

It is common practice in many industrial plants for engineers in the higher-salary levels, particularly, to be given time off with pay to attend the conventions and meetings of the professional societies. Some companies pay the dues and expenses of their society members. Engineers serving as officers in the local branches of the societies oftentimes have secretarial and mailing facilities of their employers placed at their disposal, so that actually many employers are, in fact, closely identified with the societies themselves—if not officially, at least in practice. In addition, such activities, of course, furnish good and legitimate advertising for the products the companies manufacture and sell.

When it comes to representing engineers on an economic basis, I believe we should draw the line. I do not believe that any group which is so closely supervised by employers and employer engineers should be given much credence when it comes to determining what kind of working conditions should be enforced for those engineers who are employees.

As I pointed out earlier, I am a member of the American Institute of Electrical Engineers. The AIEE has endorsed a statement made to this committee relative to proposed legislation affecting electrical engineers. I would like the committee to know, for the benefit of the record, that I, as a member, have not been asked for an opinion as to how I think the labor legislation should be amended or repealed, and I do not know of any other member who has been asked for an opinion. The same condition prevailed 2 years ago when the Labor-Management Relations Act of 1947 was under consideration by the Congress. The president of the AIEE at that time, Mr. J. Elmer Housley, was also an executive of the Aluminum Corp. of America.

Under his direction a similar statement was made before the committees of Congress, placing AIEE on record favoring discrimination between professional and nonprofessional engineers in relation to collective-bargaining rights. Approximately 1 month after the testimony had been presented to Congress, Mr. Housley sent out a questionnaire to all members to find out what they thought should be recommended for testimony. At that time I sent a letter of protest to President Housley, but, of course, it was too late. The damage had already been done.

So that there may be no question as to whom Mr. Chandler was speaking for in his testimony before this committee several days ago, I am including herewith the names and business connections of recent presidents of a number of the various professional societies which have

presumed to come here and tell the committee what the employee engineer should have in the way of protection:

American Institute of Electrical Engineers:

Blake D. Hull, retired chief engineer, Southwestern Bell Telephone Co.....	1947-48
J. Elmer Housley, district power manager, Aluminum Corp. of America.....	1946-47
C. A. Powell, assistant to vice president in charge of engineering, Westinghouse Electric Corp.....	1944-45
Nevin E. Funk, executive vice president, Philadelphia Electric Co.....	1943-44
David C. Prince, vice president, General Electric Co.....	1941-42
Richard E. Dougherty, vice president and assistant to president, New York Central R. R.....	1948

American Society of Civil Engineers:

Edgar M. Hastings, chief engineer, Richmond, Fredericksburg & Potomac R. R.....	1947
Wesley W. Horner, consulting engineer, Horner & Shifrin, St. Louis, Mo.....	1946
John C. Stevens, consulting engineer, Stevens & Koon, Portland, Oreg.....	1945
Ezra B. Whitman, Whitman, Requardt & Associates.....	1943
Ernest B. Black, consulting engineer, Black & Veatch, New York City.....	1942

American Society of Mechanical Engineers:

E. G. Bailey, vice president, Babcock & Wilcox Co.....	1948
Eugene W. O'Brien, vice president, WRC Smith Publishing Co.....	1947
E. Robert Yarnall, president, Yarnall-Waring Co., Philadelphia.....	1946
Alex. D. Bailey, vice president, Commonwealth Edison Co.....	1945
Harold V. Coos, vice president, Ford, Bacon & Davis, Inc.....	1943
James W. Parker, president, the Detroit Edison Co.....	1942

If the committee members examine this, they will find that the presidents have occupied very high positions in some of the largest corporations in the country.

Obviously, the continued attempts of employer groups to weaken and divide engineers into separate units is intended to result in their effective elimination from coverage under the act through weakened bargaining power and consequent company domination. There is always an attempt by these management groups to speak in behalf of engineers employed in industrial establishments.

It has been charged by them that the duties of technical engineering employees engaged in the development of industrial processes or the design of equipment or products may be such as to make necessary continuous and prolonged application of their individual services.

It has been stated by management groups that the very nature of those services is such that the employee must be granted prerogatives such as access to various portions of the plant at all hours, the right to work with continuing shifts, as cases may demand, latitude as to hours and location of employment, and freedom of judgment as to the best method of carrying out special assignments.

I want to say here and now that such arguments are pure nonsense and are based on nothing more solid than folklore.

In most cases in industry where technical engineers are employed, their hours of work are easily adjusted to meet occasional abnormal conditions, just as easily as are the hours and conditions of employment of production employees who build the equipment designed by the engineers.

Whenever any employee, whether he is an engineer or a craftsman, cannot complete his work regularly during the normal scheduled hours of work, then it is reasonable to assume that another employee is required to give him some assistance. If it is necessary to work



longer hours as an occasional thing, then an engineering employee should be entitled to all of the usual provisions accorded other employees in order to prevent exploitation by management.

There is also a serious effect upon the morale of any group of employees who are given separate treatment as to wages and hours of work from other employees located in the same plant or general area. For example, in many plants there are technical, professional, and subprofessional employees who work adjacent to skilled artisans under almost identical working conditions. It is common practice of employers to place the technical and professional employees on weekly, monthly, or annual salaries where allegedly they have the advantage of a steady income—so long as they are employed.

There is little advantage in salaried employment, however, if it serves merely as a cloak for longer hours of work or lower rates of pay.

Another practice is to confer fancy titles on mediocre jobs which infer executive or administrative functions.

The proposal of the professional societies which has been made before this committee is that the language of Public Law 101 be retained, which not only seeks to divide the treatment of technical engineering employees from that accorded other employees in the plant, but seeks to divide them among themselves. We are opposed to any such consideration. We are opposed to the deliberate division of technical engineering employees as suggested by the employers.

In closing, let me sum up by stating that we endorse the principle of repealing Public Law 101; we endorse the reenactment of the Wagner Act.

Mr. Chairman, in my prepared statement I did not deal with the question with respect to the right of supervisors to organize. We believe that the testimony which has been presented to this committee previously by supervisory groups will apply to us as well. There are one or two points, however, which apply to us specifically.

It is always very difficult in an engineering organization to determine at what level of employment supervision begins. There are some cases that have been pending in recent months in which employers claim that time-study men, who are only those people who take stop watches and find the rate of production workers, are supervisors, because indirectly they determine the rate of pay for other people.

The courts have, of course, decided that is not so. We have been subject to attack time and again on those bases.

In an engineering organization you do not generally have one supervisor over a whole lot of people. The fellow at the top is the man in charge of a project, a design project. He subdivides his work. Each of the heads of the subdivisions then subdivide their work, and on down, so that functionally the people have supervision over the work of other people, at least the end result, but they do not in most cases have a line supervision with authority to hire and fire and determine personnel actions, and that has been a very difficult problem with our organization, and we feel that the solution, of course, is to eliminate the exclusion of supervisors from under the Act.

I wish to thank the committee for affording me an opportunity to appear before it. Thank you.

Senator MURRAY. Is there any cross-examination?

Do you wish to ask any questions?

Senator DONNELL. No questions.

Senator MURRAY. Thank you very much.

Mr. OLIVER. Thank you.

Senator MURRAY. Senator Donnell, we have no further witnesses this afternoon, but if you wish to call—

Senator DONNELL. We will call Mr. Steinkraus, with your permission, Mr. Chairman.

Senator MURRAY. Herman W. Steinkraus.

You may state your name and the names of any organizations with which you are connected, or any other matters that you wish to put in the record.

**STATEMENT OF HERMAN W. STEINKRAUS, VICE PRESIDENT,  
CHAMBER OF COMMERCE OF THE UNITED STATES, AND PRESIDENT,  
BRIDGEPORT BRASS CO.**

Mr. STEINKRAUS. Mr. Chairman and gentlemen of the committee, I thank you for the privilege of appearing before you.

My name is Herman W. Steinkraus, and I am president of the Bridgeport Brass Co., Bridgeport, Conn.

I am appearing before you on behalf of the Chamber of Commerce of the United States, of which I am a vice president. Because of its very important bearing upon the American economy, the deliberations of your committee are being followed with great interest throughout the United States, but particularly interested are the thousands of experienced men in the ranks of labor and management who do the collective bargaining for unions and management, and who are guided in their bargaining by the rules which Congress provides.

Many proposals being made to you are not necessarily those of the individuals presenting them, but rather of the organizations which they represent and for whom they have been appointed as spokesmen.

The document which I asked permission to file with you is one representing the carefully considered opinion of the Chamber of Commerce of the United States and its labor relations committee.

You may be interested to know that the United States Chamber was formed 37 years ago, upon the specific suggestion of the then President of the United States, for the purpose of getting the judgments on public issues of a cross section of all business throughout the country.

We gather such information now through 3,050 State and local chambers of commerce and trade association memberships which represent more than a million and a quarter of their own members, mostly small-business men.

The national policies of the chamber of commerce are formulated and voted upon by referendum by its member organizations and by votes of the delegates to the chamber's annual meeting.

Our labor-relations policies have been developed over a period of years and have the support of our large membership.

I think it is fair to say that the fundamental policy of our organization is based on the belief that good labor relations are more than legal relations. They deal with human values. But to protect all people affected by the labor-management relations, there must be certain principles and procedures in cases where either side fails to bargain with due regard for what is fair, either to the unions, workers, employers, or fair to the general public.

The experience of our members so far during the last year and a half indicates that as on the whole the Labor-Management Relations Act has worked well.

There may be a number of provisions in it which have not been thoroughly tested and others which can be improved upon. But we believe it would be a serious step backward if it were wiped off the books entirely, as S. 249 proposes.

There is no doubt that the unions were greatly benefited by the Wagner Act. I think it is also true, however, that since 1947, since the 1947 law was enacted, the general public and the workers of the country have been protected against some abuses that had existed under the Wagner Act.

We do not come here to oppose further advances in labor-management legislation. We are here to support the retentions of all advances already made, and to favor further improvements where your committee finds such improvements are needed.

We represent no political party; we have members in both. We do not believe labor-management relations are basically a political question, but rather an economic one.

American industry and labor are the last great bulwark of freedom for the world. It is they who will be called upon in any national emergency. They must learn to work together and how to work well together. But the rules must be fair to both sides. Otherwise, you will have something which is not workable or equitable, which will come back to haunt us when the chips are down.

In considering these matters, we have presented our specific recommendations which can be summarized briefly as follows:

We believe in the encouragement of collective bargaining as our basic national labor policy. Both Wagner and Labor-Management Relations Acts were devoted to this end.

The law should impose equality of obligations to the bargaining process and should be clear and specific in its provisions.

It should prevent conduct by either employers or employees which is inimical to the public interest or which impairs bona fide collective bargaining.

We subscribe to the right of employees to organize when such action is the result of their free and uncoerced choice.

We support the principle of representation elections, either by employee or employer petition.

We believe that both employers and unions should be subject to unfair labor practice charges if they refuse to bargain in good faith.

We are opposed to mass picketing, intimidation, violence, or threats of violence in any labor dispute.

We believe that free speech should be protected when it does not interfere with the rights of employees to self-organization or influence them by promising benefits which they otherwise would not have been granted, and should be protected by law.

We believe in union as well as employer responsibility toward the commission of wrongs chargeable to them or to their representatives.

We believe in specific procedures for the settlement of labor disputes in vital industries where the public welfare is involved.

We believe in a strong independent Conciliation Service, as organized at present.



We believe maximum freedom should be reserved to the States for each to develop such labor-relations laws as it may in its discretion deem essential.

The provisions in the proposed law relating to secondary boycotts and jurisdictional disputes are inadequate. The provisions in existing law should be continued.

We believe all forms of compulsory unionism should be outlawed. The proposed legislation removes the prohibition on closed shop, liberalizes the provisions in the existing law on the union shop, and seeks to overturn State laws which prohibit compulsory unionism.

And, finally, supervisors are members of management, and employers should not be compelled to recognize their organizations for purposes of collective bargaining.

On the basis of these principles and others, we believe that the proposed labor bill is completely inadequate.

We hope that your deliberations will lead you to retain the good features of the existing law, to eliminate only those things which are proven unwise and to add those things which experience has shown are desirable.

This is not only the sound way of progress, but it will also promote the stability of relationships between labor and management that is essential to successful operation.

Thank you very much for the permission to read this statement to you, sir.

Senator DONNELL. Mr. Chairman, Senator Taft was expecting to appear for the purpose of examining Mr. Steinkraus.

Mr. Shroyer has communicated with Senator Taft's office, and I believe and hope he will be here. If he is not here, I shall undertake as best I can to examine the witness, but I respectfully suggest, if you gentlemen would like to proceed until Senator Taft arrives, that you do so; otherwise, I will proceed at this time—whichever you like.

We shall not hold up the proceedings if no one on your side desires to examine the witness. I shall proceed, in that case, but I am sure we would be very much helped if we waited until Senator Taft got here.

Senator DOUGLAS. There is one question I should like to ask Mr. Steinkraus. Is the statement that you have made a substitute for the mimeographed statement which you have prepared, or are you proposing to put the mimeographed statement into the record?

Mr. STEINKRAUS. Senator, we are proposing to put the mimeographed statement in the record, and at the beginning of my statement I requested that permission.

Senator DONNELL. I move that the mimeographed statement be incorporated in full at this point.

Senator MURRAY. Yes.

Mr. STEINKRAUS. Because of the limitation regarding 10 minutes, I thought it would be well to prepare my remarks in different form. (The prepared statement submitted by Mr. Steinkraus is as follows:)

STATEMENT OF HERMAN W. STEINKRAUS, ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, REGARDING PROPOSED NATIONAL LABOR LAW REVISION

My name is Herman W. Steinkraus. I am president and chairman of the board of the Bridgeport Brass Co. of Bridgeport, Conn. I am appearing before

you on behalf of the Chamber of Commerce of the United States, of which I am vice president. I want to present the views of its broad membership to you in regard to legislative proposals before you to change our current labor laws.

At the outset a bit of background would seem to be appropriate. The chamber is a national federation of some 3,050 State and local chambers, trade associations, and other business groups. Its underlying membership is collectively comprised of well over a million and a quarter businessmen, most of them small-business men. They and the policies of our organization represent the views of a major cross section of American business.

I should like to direct my testimony primarily at general principles which we feel should govern the drafting of any national labor law. The basic purpose of law is the protection of society and the establishment of principles by which the conduct of society shall be regulated. In the field of employer-employee relations it should impose equality of obligation on both parties to the collective-bargaining process and be clear and specific in its provisions. It should impose that minimum of control that will encourage voluntary rather than Government-controlled settlement of labor disputes. It should subject both employers and union to unfair labor practice charges in respect to conduct which is inimical to the public interest, or which impairs or prevents bona fide collective bargaining.

In considering these principles, of course, I should like to discuss whether present provisions of law amendatory of the Wagner Act, or the proposals set forth in S. 249 would result in a fair, equitable, and permanent labor policy.

#### CHAMBER POSITION ON CURRENT LEGISLATIVE ISSUES

Following the President's state of the Union message on January 5, the Chamber of Commerce considered what its position toward the current problem of labor legislation should be. It follows:

The Labor-Management Relations Act, 1947, became the law of the land as the result of widespread public demand in favor of strengthening and making more equitable the statutes previously in effect.

The new law has been in operation 17 months. During that period we have acquired insufficient experience to evaluate its full effect upon sound employer-employee relations. At the same time we believe that the law is a distinct improvement over previous law. To date, it has reduced strikes, curtailed many abusive practices, and materially assisted in the spread of equitable collective-bargaining relations.

We hold that Federal law should be directed toward the effectuation of a public policy which fully recognizes the rights and obligations, not only of employers and employees, but of the public and Government as well. Ways to improve the law in an effort better to effectuate such a policy should constantly be sought.

We shall cooperate at all times with our Government in giving mature consideration to suggested changes which may be fair, equitable, and in the public interest. Except as the need for changes are clearly demonstrated to be in the public interest, we favor retention of the basic provisions of the Labor-Management Relations Act.

#### CONTRAST IN EMPLOYER AND UNION ATTITUDES

This statement represents an offer to cooperate in finding ways to improve our labor laws, in an effort to devise a statute which will serve primarily the public interest, while protecting the legitimate rights of employers and employees. It represents a vast change from the attitude of the labor organizations during the consideration of the Wagner Act amendments of 1947. Then, the unions refused to consider any changes at all in the Wagner Act. They wanted retention of that law unchanged, regardless of the proven fact that the law was 12 years old, was an outdated statute by reason of the very conditions it had had served to create. This contrast between the union attitude and that of employers generally is worthy of attention.

The unions generally have not agreed to accept any restraints on their activities, however abusive of the public interest they may have been. They have claimed that voluntary action on their part would be enough; the same type of voluntary action that led to abuses in the first place. Employers are keenly desirous of seeing a labor law enacted which will do equity to employers, employees and their representatives, and the public. Any changes that are considered should be to this end.

In the consideration of any new labor law, we believe that hasty action will not point the way to improvements in these laws.

L. M. R. A. is a comprehensive statute which laid down a broad national labor policy. Congress cannot adequately consider the effects of it, or necessary changes in that policy in a few days. We believe current hearings should be directed to a mature and careful consideration of the effects of the present law. The need for correction of the Wagner Act has been overwhelmingly documented over the years. We believe time should be taken similarly to document whether there is really need for changes in the L. M. R. A., and, if so, what they should be.

But let us consider the basic principles which in our judgment should govern the setting of national labor policy. Let us start with the question as to what kind of policy will really encourage collective bargaining, and whether S. 249 will have that effect.

#### THE ROLE OF GOVERNMENT

It seems to me a fundamental proposition that if Government is going to protect the interests of one party to the bargaining process by legislation, it must do the same for the other. Government cannot encourage collective bargaining between equals, based on mutual respect and good will, if it leaves one side free to do as it pleases while holding down the other by placing gags and restraints on him. Both employers and unions, in other words, at times abuse the process of collective bargaining, and both should either be restrained from committing abuses, or both should be left free to work out their own destiny. Government cannot logically permit one side to abuse collective bargaining and restrain the other from doing anything about the matter. There should be freedom for both sides or restraints on both.

Thus, before 1935, both parties were free of governmental restraints. Between 1935 and 1947, a stop-gap statute was in effect which had as its objective the encouragement of self-organization and collective bargaining and the prohibition of certain employer practices which were alleged to impede that policy. If tested by this standard, that act served its purpose well. Unions grew in power and strength from 4 million members in 1935 to 15 million in 1947. They have increased their membership to 16½ million under the L. M. R. A.

#### WAGNER ACT INADEQUATE TODAY

But as that interim period wore on, as unions became powerful organizations—some so powerful that, like the United Mine Workers, they boasted of the fact they didn't need the Wagner Act—it became evident that the major part of that act's work had been accomplished. A gradual shift in the thinking of the public came about, and opinion demanded that our labor policy be brought up to date, so that fair and equitable rules of the game should be laid down for both sides in order to develop a national labor policy more adequate to its expressed purpose. Certain union tactics were clearly seen to be equally destructive of true collective bargaining. It became necessary to repair the old vehicle in order to modernize it. Collective bargaining had progressed in 12 years, while our Federal statutory labor policy had stood still, helpless to cope with the new situations that were constantly presenting themselves.

The underlying cause of the passage of the L. M. R. A. in 1947 was to extend, therefore, the operation of the national labor policy to both parties to the bargaining process, to make both parties assume the responsibility demanded of each, not merely one side. It became evident that a basic assumption of the Wagner Act, that only employers need be considered as responsible, had effectively disappeared as unions came to take an equal, and in many cases, superior role in hammering out the terms of the collective agreement.

Thus, gentlemen, when you go back to the Wagner Act, you go back to a statute which time has passed by. Practically everybody except some of the union leaders admit that it is inadequate today. In 1935 that act protected a weak and struggling labor movement. In 1949, it would place unnecessary power on the side of unions which have grown strong, powerful, and, in some cases, irresponsible under its shelter. I cannot conceive of a more unfortunate step than that would be, or one less likely to create, a workable national labor policy.

#### BASIC PRINCIPLES FOR LEGISLATION TODAY

Let me, therefore, turn to what I feel should be the specific principles that should be found in any labor law: The specific protection that should be enacted in order to protect the public interest in fair, peaceful employer-employee rela-



tions; the framework of rules within which the parties may freely bargain on the basis of equality. The Chamber of Commerce accepts the principle of a statute which grants employees the right to organize and bargain collectively through representatives of their own free and uncoerced choice. Employers should not be permitted to interfere with that; nor to coerce employees in the exercise of that choice, nor to dominate a labor organization, nor to discriminate against any employee on the basis of whether or not he belongs to a union. Chamber policy has long recognized these principles. And these principles are in the Wagner Act and, of course, in the L. M. R. A. as well—the same language and, let me emphasize, the same effect that they have had since 1935. That point, of course, has been omitted by opponents of the L. M. R. A.

In the exercise of freedom of choice of representatives, we believe in the principle of employee elections to determine that choice. We support the principles of the Wagner Act, as continued in the L. M. R. A., in that regard. Apparently some of those who wish to change the law feel that these elections keep employer-employee relations in an "unsettled state." We cannot agree with them, if that is what is meant; the democratic election procedure is one that should be preserved.

Now all these provisions basically pertain to the union organizational process. They lay down peaceful procedures for organizing which were designated to make unnecessary strikes to force employer recognition of a union, and to prevent employer impediments to organizing. I do not wish to belabor the point, with which I am sure you are all in agreement, that we do favor incorporation of these provisions in any labor law that is adopted.

But there is much more to it than just eliminating employer interference. Certain union activities are equally as abusive of the right to organize as the alleged employer practices listed above. Unions, too, engage in restraint and coercion of employees in the exercise of these rights. They also coerce employees in the exercise of their converse right (often admitted to be implicit in the old Wagner Act) to refrain from organizing and bargaining collectively. Unions seek to discriminate against employees for rival-union activity or for no union activity at all. Unions seek to upset NLRB certifications given to other unions, by strikes or boycotts, or to force a group of employees to join a union by shutting down, through boycott, their employer's business. Unions seek to accomplish by force and intimidation the very thing that the act was designated to assist them to attain peaceably. I think that union's right so to short-circuit the peaceful procedures of the act should be limited. Otherwise, you negate the very reason why it was passed.

The L. M. R. A. recognized the fact and assumed that the public interest would be best served by making unfair labor practices of those union activities which abuse the right of self-organization. They should be retained in our national labor policy because it simply is not complete otherwise. S. 249 itself recognizes that it is unconscionable for a union to strike or boycott in order to upset an NLRB certification, or an NLRB order to bargain collectively with another union, or where an employer has recognized another union where a question of representation may not appropriately be raised.

The present act does not, however, limit a recognition strike except where there is a certified union. Board decisions have said so (*Perry-Norvell Co.*, 80 NLRB 47). A strike is, therefore, not the type of restraint and coercion contemplated by the act and it is idle to say it is. According to the Board, it is actual violence, or threats of violence that are intended (*Sunset Line & Twine*, 79 NLRB 207). We are unable to see why the unions object to curbs on violence, where State laws are ineffective or ineffectively enforced; or, for that matter, we think mass picketing, which contains a potentiality of violence, should be subject to prohibition. Government cannot with fairness and logic permit employer violence and leave the unions free to intimidate or do anything else their fancy dictates.

We think, therefore, that any labor law should make it a union unfair labor practice to restrain or coerce employees in the exercise of their right to organize or its converse, their right not to organize. This principle should apply to employers and labor organizations alike.

#### COMPULSORY UNIONISM

It would be appropriate at this point to mention the closed shop. The Wagner Act made it an unfair labor practice for an employer to discriminate against employees by reason of union membership or lack of it, but permitted unions

to make a closed-shop contract with an employer whereby he could avoid that prohibition, in part, by discriminating for union members. In other words, it was wrong for an employer to discriminate but all right for a union to do so or force the employer to do so. The result is illogical. If compulsion is wrongful conduct for an employer, it is equally wrongful for a union. If a monopoly is wrongful conduct for an employer, it is equally wrongful for a union. There is no subtle change from wrong to right merely because of the character of the person perpetuating the wrong.

The chamber has long contended that compulsory unionism interferes with the free and uncoerced choice of employees with respect to collective bargaining. Employees should be free to join or not to join a labor organization. Their right to work should never be dependent on union membership.

If unions cannot recruit and hold members on their merits, they should not be allowed to force employees into membership. If I am unable to persuade a customer to buy my product, I am not allowed to sell it to him by compulsion. Why should any different rule apply to unions?

Moreover, this compulsion at times works in another way. A qualified employee may want to work and be willing to join the union which holds a closed-shop contract. If the union, however, won't admit him to membership he is denied employment opportunity. This, too, is wrong. It is unjustifiable monopoly of a basic and cherished right: the right to earn a living. The closed shop, coupled with a closed union, has been too common a device for abusing the rights of employees for Congress simply to close its eyes to it.

A compulsory unionism contract restricts the plant management in an unwarranted and disadvantageous manner in the selection and retention of suitable employees. Under such a contract, the employer would be able to hire only persons who are willing to become members of the recognized labor organization if they are not already members. Other persons who have good and sufficient reasons of their own for either preferring membership in a different labor organization, or in none at all, would either refuse to work for the employer, although they might be highly desirable and useful employees from every standpoint, or they would have to pay additional initiation fees and double dues, if they want to retain membership in another union of their choice.

Under a compulsory unionism contract, the employers would be compelled to discharge any employee, no matter how long his period of employment or how satisfactory, if such employee is unwilling, for some reason of his own, to be a member of the recognized labor organization or is unwilling to pay dues to it. This might easily cause serious interference with the efficient operation of the plant.

The closed or union shop involved mandatory dues payments. This deprives the union members of their democratic control of their organization. The members lose their right to resign and stop paying dues, which is their most effective means of preventing arbitrary or unscrupulous action, or even racketeering, by their leaders. It permits the union leader to be a dictator and destroys the principle of majority rule. It forces a member of the union to quit his job as the only escape from supporting an organization which may have become wholly unsatisfactory to him.

Compulsory membership in a particular union violates the basic principle that employees should not be required by the employer to take part in any organization or activity or enroll in any benefit plan in order to secure or keep a job. It is a sound principle that all such participation should be strictly voluntary.

The attempt of the unions to eliminate "free riders" through the closed shop is unfair to the minority group. No one ever heard about "free riders" until the unions started to collect "fares" in the form of initiation fees, dues, and assessments. This restriction on freedom of choice of the worker (who, many times, cannot afford to leave his job and community in search of another) is like compelling Republicans in a county or town which has voted Democratic to contribute to the support of the Democratic Party or leave the locality. All must pay their assessed taxes for public services. But taxes cannot be collected to maintain the party treasury.

Compulsory unionism is harmful to the rights of the unorganized worker, the worker who does not want to join a union. Recent Supreme Court decisions have indicated that legislation which protects the rights of the unorganized worker may be enacted by the States where they feel it necessary to correct a situation which is inimical to the public welfare. Denial of the right to work of a worker who happens not to sympathize with the union is denial of a

fundamental right. It is said that a worker who cannot get a job because of closed-shop restrictions can go to a nonunionized area to get a job. Far from a defense of compulsory unionism, that statement is a strong argument for outlawing it.

An employee should have the right to continue to live in the place where he may have lived all his life. He should not be arbitrarily forced to spend his savings and disrupt his family life. No, this argument shows most clearly one of the basic failings of the closed shop and why it should not be legalized.

These types of abuses, multiplied many times, were what led Congress to outlaw the closed shop. The arguments against it have not lost their cogency at all. Basic limitations on workers' personal liberty are involved in any closed-shop contract. Restraint, often amounting to absolute, arbitrary monopoly, on an employer's control of his business, of his right to hire employees he considers most suitable for his organization, of his communication lines with his employees, exists under any closed-shop contract. The basic principle of the right to work is flagrantly disregarded. Nor are such practices made less of an evil by calling them union security measures, rather than compulsory unionism.

#### STATE COMPULSORY UNIONISM LAWS

We oppose the provision in S. 249 (sec. 107) which legalizes contract clauses providing for compulsory union membership, in disregard of the many State laws which have prohibited or limited that practice. The objective in this new provision is to achieve exactly the opposite effect from that of section 14 (b) of the present law. Section 14 (b) permits the States to prohibit or limit contract clauses which force employees to accept and maintain union membership in order to be employed. This new proposal is a use of the interstate commerce power to force upon employers and workers practices and standards contrary to those of the area in which they work and live.

This attempt to legalize compulsory membership in unions runs directly counter to 17 State laws, most of them adopted in the last several years, which seek to prevent such compulsion. Thirteen States now have absolutely forbidden compulsory union membership: Arizona, Arkansas, Florida, Georgia, Iowa, Nebraska, Nevada, North Carolina, North Dakota, South Dakota, Tennessee, Texas, and Virginia. Four others impose limitations of various kinds on contract clauses providing for compulsory union membership, chiefly to insure that such clauses shall, before they are put into practice, have the approval of a large proportion of the employees who will be compelled to observe them: Colorado, Kansas, New Hampshire, and Wisconsin.

I have discussed the relationship between Federal and State laws which was established by section 14 (b) of L. M. R. A. and which would be destroyed by the proposed law. I ask you to give serious consideration to the fact that these 17 State laws represent a trend in public opinion within the States which ought not to be ignored.

#### SUPERVISORS

The subject of supervisors comes up as a result of S. 249. Under the Wagner Act, the NLRB, after changing its mind several times, finally decided that the Wagner Act gave governmental protection to unions of supervisors or foremen, and that employers should be required to bargain with them. The Supreme Court upheld that view, in the absence of any congressional intent to the contrary. The Labor-Management Relations Act withdrew this protection. It thereby cured an anomalous situation created by the act whereby unions were permitted to invade the field of employer representatives, while, at the same time, employers were forbidden to interfere with unions in any way. This violated a basic principle of American jurisprudence called equality before the law. It gave governmental sanction to a situation whereby employers could not sit on both sides of the bargaining table, but the unions were permitted to do so. It meant, in many instances, that an employer no longer had freedom of choice as to who would represent him in dealing with the union—for example, in the first step of many grievance procedures. Loyalty to the union would come into conflict with loyalty to the employer that the foreman represented. It meant that, while on the one hand an employer was responsible under the law for any action of his foremen, he could not control those actions so as to protect himself. If the union ever wanted to get the employer in a jam, they could cause the foreman to commit an unfair labor practice for which the employer would then be penalized.



I note that S. 249 would restore this situation, would treat supervisors exactly like rank-and-file employees. We believe that they are members of management and should be recognized and accepted as such. No union should be permitted to seek protection of Federal law in encroaching on management, any more than management is permitted to interfere with union organization.

#### ELECTIONS TO DETERMINE BARGAINING RIGHTS

There is no provision in the bill for decertification of a union when employees no longer wish it to represent them, nor, in fact, any right of an employer to petition for an election to determine whether a union actually represents a majority of his employees, following a demand that the employer bargain with it.

I might say that under the current act, an employer may petition for an election only after the union has presented a claim for recognition. I note that Secretary Tobin in his testimony has said that such a right of petition will enable the employer to force an election on the union before it is ready for one. That statement simply ignores plain realities. If a union thinks an election is premature, it needn't demand recognition. It may wait until it is ready to do so, and thus prevent an employer petition under the law. Under both Wagner Act and L. M. R. A., an employer need not bargain with a union which does not represent a majority of his employees. If a union fails to adduce proof of a majority to an employer when demanding recognition, why shouldn't he have the rights to have an impartial election disclose to him whether he should conform to his statutory duty to bargain or not?

We urge that employers or employees be given the right to seek elections to determine whether a union represents a majority, either on the unions' presenting a claim for recognition or at the end of a current contract period if a question of representation may appropriately be raised under the usual NLRB rules and precedents.

#### FREE SPEECH

I note that the provisions of S. 249 would eliminate the free speech protection granted to employers by the L. M. R. A., and would seek a return to the gag rule of NLRB days. I do not wish to protect the employer who threatens reprisals or promises benefits as an inducement to his employees to stay out of the union. Neither did the framers of the L. M. R. A., and the law so reads. But an employer should not be prevented from making a speech or talking to his employees on the subject of unionism, when that subject vitally affects them both. Deny him that right and you may violate the Constitution. It is wholly unfair to permit unions to publish their side of the story, by picketing or otherwise, under the guise of free speech, and to prevent employers from doing likewise. Logically, if Government gags employers, it should gag the unions. If it gags employers, it sets a precedent whereby some future Congress less friendly to labor unions may gag them. Free speech is a precious cornerstone of American democracy. Employers should not be deterred from encouraging wholesome, cooperative relations with their employees and their representatives by any such restrictions of a nonthreatening character.

#### THE REQUIREMENT TO BARGAIN

Let me turn now to matters wherein the law touches the actual processes of collective bargaining itself. There are rules that have been formulated both under the Labor-Management Relations Act and under the Wagner Act for the conduct of collective bargaining. Our national labor policy was gradually changed under the Wagner Act from one primarily devoted to procuring widespread union recognition to one that added the principle that, once recognized, the employer should bargain with the union on certain subjects. Or, as the Board called it in the Inland Steel case, the Wagner Act slowly developed a system of compulsory collective bargaining. Or, as phrased in the act, it is an unfair labor practice for an employer to refuse to bargain in good faith with a union who represents a majority of his employees, over "wages, hours, and terms and conditions of employment." Gradually, the NLRB began to spell out what the employer should bargain about, how he should bargain, in addition to saying who he should bargain with.

The Labor-Management Relations Act went on to define the process of bargaining, for purposes of the act, and to make it an unfair labor practice for unions to refuse to bargain in good faith as well. We think that any revision in the law would be incomplete without such a provision. Indeed, a recent study

made by the University of California indicates that the unions there studied would have little objection to continuing such a requirement (23 L. R. R. 303, Jan. 31, 1939).

Thus, the Board has required employer counterproposals to union demands as a test of good faith. Why not require the union to bargain about these? Or, why not require the union to bargain rather than force an employer to accept a union-dictated agreement, as has been the case in all too many situations? There are plenty of instances of strong unions and weak employers where just that sort of thing occurs. Bargaining is a mutual process and either Congress should keep it so for both parties, or else turn them both loose to seek their own ends without any such restraints at all.

#### SCOPE OF COLLECTIVE BARGAINING

I note that it is, in S. 249, an unfair labor practice for unions or employers to fail to file 30-day notice of contract terminations. It drops the 60-day requirement, and the requirement that the contract be continued during the negotiating period. We think that the later requirement should be retained, although we do not oppose the dropping of the provision penalizing employees for striking during that period, that is more properly left to the parties to discipline any wildest strikers. It is enough to deprive them of any rights under the law, as the Board did under the Wagner Act, where no employer unfair labor practice was involved (*Scullin Steel Co.*, 65 NLRB 1294 (1946)).

We also feel that the act should remove doubt about what are the matters on which it is going to require bargaining, and that such matters should be limited to those fields which are the proper concern of the unions. We do not think that unions should use the governmental compulsions of the law to encroach on strictly management functions. If an employer wants to bargain about them, or the union wants to force him to do so, they have such right. But the Government should not step in and require an employer to talk about his domain with the union, especially where it forbids the employer from interfering in any way with the union's private domain.

Thus, the act should prevent the misuse of any welfare funds, and it should exempt the employer from compulsory bargaining about such funds if he has to pay taxes to Federal or State Governments for the same purposes, but not if he sets up a fund into which employees must make payments in order to secure or retain employment. I note, according to some testimony, it is felt that "the law removes from the area of free collective bargaining welfare funds." If that were true then why are many employers concerned about the NLRB and court decisions in the Inland Steel case? The law should spell out those management functions about which an employer need not bargain if he so chooses, or if the union is unable to force him. It should avoid broad terms such as "conditions of 'employment'" so the need for court and administrative interpretation of the act is reduced.

#### SECONDARY BOYCOTTS

Unions should be forbidden, as an unfair labor practice, the use of the weapon of the secondary boycott. I note that it has been said that there are many justifiable secondary boycotts which shouldn't be outlawed. I am quite unable to perceive the reasoning behind such an assertion. To put pressure on one employer to coerce another into doing something the union wants cannot possibly be justified. If it is unjustified to upset an NLRB certification or valid collective-bargaining contract, it is equally unjustifiable wherever it is used. The essence of the secondary boycott is that an employer who has no dispute with his own employees is pressured into aiding the union which has a dispute with another. I agree that if the first employer has a subcontractual relation with the one embroiled in a dispute, pressure on the former is justified. And Court and Board interpretations of the current L. M. R. A. provisions have not included that type of boycott under its prohibitions (*Douglas v. Metropolitan Architects*, 21 LRRM 2256 (1948)).

The boycott in part is used (1) in aid of jurisdictional disputes, (2) as a means of raiding rival unions, (3) as a means of perpetrating monopolies, and (4) as a means of organizing nonunion plants. Even S. 249 would ban the first two. The third is obviously unjustifiable and should also be banned, and, in case of the fourth, why doesn't the union go out and organize the plant directly? The boycott is the unfair way of doing the job and, like all unfair tactics, it harms

most the innocent third party who may be a buyer from or seller to the other. It is like the closed shop. It seeks to deny the workers who do not belong to the boycotting union the chance to make a living working at their job by shutting down their employers' business.

#### MASS PICKETING AND VICTIMS

When collective bargaining falls down, strikes and picketing may be resorted to. But, as the Supreme Court has said, in *Thornhill v. Alabama* (310 U. S. 88), the Government "is not required to tolerate" all forms of picketing. I refer to the use of mass picketing and violence in the course of a labor dispute. We do not think, nor have NLRB and the courts thought, that peaceful picketing for a legitimate objective was outlawed by the L. M. R. A. I hardly need justify to you gentlemen the reasons why violence on the part of a union should be effectively forbidden. We have a Federal law that provides criminal penalties for the transportation of strikebreakers interstate. Why not prohibit union violence, either positively or else by withdrawing the protection of the act (as did the court in *NLRB v. Perfect Circle Co.*, 162 Fed. (2d) 1566) from those unions and employees who engage in it? What is good enough as a Wagner Act interpretation ought to be good enough to incorporate in the law, if we really mean to encourage industrial peace.

#### MULTIEMPLOYER BARGAINING

S. 249 omits any consideration of the problem of industry-wide bargaining, or, more accurately, multiemployer bargaining. Enactment of this bill will turn this matter back to former NLRB rulings. However, these were largely directed to the matter of whether a multiemployer unit was appropriate or not. Generally speaking, the Board held that it was appropriate only if an employer consented to such a unit, or had authorized an association to bargain on its behalf.

Multiemployer bargaining raises a series of problems for the employer, not the least of which revolves around whether the present antitrust laws apply to such an arrangement. No definitive word on this matter has been received from the Department of Justice at any time. The bill would thus permit unions to force employers into such an arrangement although there is substantial doubt that they would be exempted from antitrust action. Present law makes it an unfair labor practice for a union to dictate the choice of bargaining representative by an employer, and we think that it is only fair to continue that provision—indeed, if I recall, it was in the substitute for the L. M. R. A. that members of this committee introduced in 1947—in view of the uncertainty that faces employers. There is a Supreme Court decision outstanding which forbids unions and employers to combine to commit monopolistic practices (*Local No. 3 v. Allen Bradley Co.*, 325 U. S. 797 (1945)), and, until this matter of the application of the antitrust laws is cleared up we think that the present union unfair labor practice should be retained. Chamber policy condemns industry-wide bargaining which assumes such proportions that either employers or unions can exercise monopolistic powers. We do not think any Member of this Congress wants to foster a monopoly, whether of employers or unions or any combination thereof. Continuation of the present provisions will assist, to some extent, in reducing that danger.

#### JURISDICTIONAL STRIKES

S. 249 provides for curbs on jurisdictional strikes. It does so, in principle, quite properly. Such strikes are a nuisance, are totally unjustifiable, and should be flatly forbidden by law. The provisions of the L. M. R. A. have been highly effective on that score, as, indeed, labor leaders themselves will freely admit. For the first time, after 50 years of futile union endeavor, a procedure was set up which stopped such strikes in their tracks. Moreover, it led to management and labor getting together in the building and construction industry and working out an excellent voluntary method of settling such disputes. It has worked so effectively that only three jurisdictional dispute cases have come before the NLRB during the effective period of the L. M. R. A. The provisions of S. 249 are not likely to improve that record.

They are more likely to encourage the unions to settle their jurisdictional disputes by force outside the procedures of the proposed section. It merely provides for NLRB decision in case of a threatened jurisdictional work stoppage, by way of arbitration award which is to have the same effect as a Board order.



Failure to abide by the Board decision is made an employer unfair labor practice, as well as a union unfair labor practice.

There is nothing really effective in this bill to stop jurisdictional strikes. No such strike is unfair until after NLRB decision. There is no temporary injunction at NLRB discretion to hold the status quo pending Board decisions. In other words, a union need only strike to negate these proposed provisions completely. There is real danger that this proposed method would serve to encourage rather than deter jurisdictional disputes. We recommend that this committee consider enacting an effective deterrent to this type of abusive strike, based on the provisions of the present law.

#### UNION RESPONSIBILITY

One of the requisites of mature, fair collective bargaining is union responsibility. In fact, one of the main reasons for passage of the Wagner Act amendments of 1947 was an attempt to make unions assume the responsibility that some of them had failed to assume under the protective umbrella of the Wagner Act itself. These new provisions were an attempt to spell out those union abuses which were most harmful to good labor-management relations and to ensure that they were discontinued. Legitimate activities were not touched—let me repeat, were not touched—under that act, and those who say they were are unfamiliar with the substantial gains in membership and benefits for that membership and in political gains that were made under that act.

But, aside from the question of union unfair labor practices, I note that your present S. 249 would remove the provisions of current law which made unions and employees responsible in court for breach of contract, or which permitted unions to sue or be sued in their common name in the Federal courts. We think that this provision is vital and we recommend that Congress ensure that unions be suable for their wrongs, for their breaches of contract and be made answerable in damages. There is not one other type of institution or person in this country who cannot be held judicially liable for breach of contracts, for torts, for other injuries to the person and property of others. The unions claim that such suits would harass and bankrupt them. The short answer to that is that they can avoid harassment and bankruptcy, like everyone else, by refraining from committing injuries. It is completely wrong to exempt one group in the country from liability for their actions.

The record under these provisions completely disapproves their claims, moreover. Of 56 suits brought, 37 were brought by employers and 19 by the unions themselves. In no case have court damages been awarded. Moreover, the whole controversy as to whether private parties could get court injunctions against unfair labor practices arose as the result of a union suit against a company (*Amazon Cotton Mills v. TWA*, 167 Fed. (2d) 183). Now, employers do not like to conduct their labor relations in court, nor have they done so on the record, nor does the act, as is claimed, "throw on the Federal courts the task of deciding many issues." There is, however, certainly no equality in permitting a union to sue an employer who is barred from suing the union. That would be the effect of repealing present law in that respect.

#### THE CONCILIATION SERVICE

I note, further, that this bill would return the Conciliation Service to the Labor Department. It cannot possibly be an impartial agency under the control of that Department. The words of the present Secretary, completely disapprove that. He said before the fifteenth annual conference on State legislation that:

"I want a department in which all Federal labor laws are administered. I want a department that will be what Sam Gompers wanted it to be—'Labor's voice in the President's Council'" (p. 5, *Résumé of Conference Proceedings*, Bulletin 104, Bureau of Labor Standards).

That's what labor representatives hear from the Department of Labor. When testimony is given before your committee asking for the return of the Service, what do you hear?

"I cannot state too strongly that I, as Secretary of Labor, consider myself to represent the more than 140,000,000 American people and every segment of our economy."

The Conciliation Service is not a labor agency. It is a labor-management agency, and should be kept impartial—as Secretary Tobin admits. It cannot be kept so in a department whose statutory direction is to advance the welfare of the wage-earner. Employers feel very strongly about this. They will coop

erate with an impartial agency, but they are loath to subject themselves to one which even looks as though it were otherwise. I should think the unions would feel the same about placing the Service in the Department of Commerce. If that is so, the chance of the Service to continue its highly useful, highly effective work will be largely destroyed. Many employers believe returning the Service to the Labor Department will cause it to lose a great deal of employer confidence. Without that confidence, it just can't operate as it should.

We need a strong, independent Service, and I recommend that you continue it as such.

#### NATIONAL EMERGENCY STRIKES

One of the most important matters before you is the question of how to deal with national emergency strikes. The basic principles for settlement of such strikes should be, of course, the public interest. That means that Congress should provide such procedures that, when collective bargaining in industries affecting the public interest has broken down, there will be available other measures that will protect the public, whose interest is paramount to that of either labor or management in this matter.

What does S. 249 provide?

It permits the President to issue a proclamation calling on the parties to refrain from work stoppages for a period of 30 days. They need not pay any heed to this proclamation, but if they do, then they must refrain from changing the status quo for 30 days while an emergency board reports and recommends a settlement.

It would seem that these procedures would be relatively ineffective in any national-emergency dispute. The President can proclaim the existence of such a dispute. We certainly do not believe that he can do anything to insure that there will be no work stoppage, beyond calling on the force of public opinion. Now, public opinion can be an effective deterrent to many proposals, but not against the determination of a labor leader or an employer to resort to the traditional economic weapons available when collective bargaining has broken down. We have seen too many instances of such a course these last few years to permit ourselves any illusions on that score. The President himself didn't call on public opinion to stop the 1946 railroad strike, nor in the six instances in which he used the injunction procedures laid down by LMRA.

The only alternative is to compel the parties to refrain from a work stoppage by giving the Government adequate powers to this end. Such powers should induce the provision of an injunction pending the reaching of a settlement by the parties themselves. In any case, the provisions of the bill before you are almost completely ineffective to secure a proper settlement. Retention of the current provisions of law would be far more effective than the proposals which have been laid before your committee. We think that the Government must step in and provide a form of machinery for the settlement of such disputes that will permit the parties, perhaps through the aid of conciliation, to settle them on their own initiative, while at the same time preventing a work stoppage in which the public interest would be seriously jeopardized. S. 249 is completely inadequate for that purpose, and we prefer some refinement of present law to insure proper protection of the consuming public.

In addition, we think that Secretary Tobin's recommendation to outlaw strikes against Government should be adopted but by way of addition to S. 249, not in an appropriation bill that must be reenacted yearly.

#### PROSECUTION AND JUDICIAL FUNCTIONS

Procedurally, the LMRA made certain changes in the structure of NLRB which we feel ought to be retained. I am speaking chiefly of the separation of the prosecution and judicial functions of the Board. These were made largely separate by the LMRA, and we think that the experience under the law demonstrates that they should remain so. There has been no conflict between the authority exerted by the general counsel and the judicial functions exercised by the Board itself. Both parties have easily managed to split up the work of the entire NLRB administrative structure, and both parties have easily managed to work out procedures which would conduce to more effectively carrying out the work of the Board.

Separation of functions is an essential concomitant to the equitable administration and impartial application of the law to both employer and union unfair labor practices. The greatly increased public confidence in the processes of

the NLRB alone would justify retention of the present provisions which segregate their functions. The greatly increased efficiency of the Board, the way in which it has managed to bite into its backlog, is merely a further cogent argument for the retention of its present structure.

#### STATE LAWS

Among the salutary provisions of the law now in effect, which would be cast aside if S. 249 were adopted, are those provisions which attempt to set up a sound and workable relationship with various State governments in the field of labor relations. In place of this encouragement to the States to adopt sound labor laws which would permit them to coordinate and implement, at the State level, labor policies consistent with those of the Federal Government, you are asked to return to the familiar Federal policy of over-riding State labor laws by constantly widened exercise of the interstate commerce power, in disregard of the fact that many States already have enacted sound and useful labor laws. The area of purely intrastate commerce in which these laws may apply has already shrunk almost to the vanishing point as the result of greater and greater Federal intervention and control.

The LMRA contained a provision (section 10 (a)) which authorized the National Labor Relations Board to make agreements with State boards ceding to them jurisdiction, within State areas, over labor disputes even though such disputes should "affect" interstate commerce. That provision limits authority to cede jurisdiction unless the State law to be applied is consistent in language and in practice with the corresponding Federal law. Another limitation was that in four industries (mining, manufacturing, communications, and transportation) the labor disputes had to be predominantly local in character.

There are many practical benefits which would derive from incorporating into any new law you may enact a provision which achieves the same general purpose as this provision of the LMRA. I have already mentioned the most important, namely, the encouragement you would give to State governments to adopt and administer State labor laws consistent with those of the Federal Government. But there are others, and among those worthy of special mention are: (1) that it would assure handling of local disputes by local authorities; and (2) that it would substantially lessen the case load borne by the Board.

I recommend that the language of such a provision make clear that the Board has authority to execute jurisdiction agreements with State boards even in the matter of labor disputes affecting interstate commerce. I would recommend also that the specific authority for such Board agreements be broadly extended to include every State labor relations act which might guarantee to workers the right to organize and to bargain collectively and which lists unfair labor practices for both employers and unions similar in intent and scope to those in the Federal law. If such jurisdiction agreements are to be encouraged, the Board should not be given too restrictive a yardstick as to consistency between the Federal and State laws. If the Board has and uses its powers to either cede or withdraw jurisdiction, this can be a strong incentive to the establishment of coordinating laws and agencies at the State level.

This emphasis on the application of State laws as compared with Federal encroachments is derived from a brief and succinct chamber policy which I feel is important enough to set out here. It reads as follows:

"Maximum freedom should be reserved to the States to establish and maintain such body of labor relations laws as each State in its legislative discretion may consider essential."

#### SUMMARY

I have discussed rather extensively the basic principles which we feel should govern the enactment of any national labor policy. Let me, therefore, summarize them in order to make clear our position on this entire matter.

We believe in encouragement of collective bargaining as our basic national labor policy.

We subscribe to the right of employees to organize and bargain collectively when such action is the result of their own free and uncoerced choice.

We feel that both employer and union actions which interfere or seek to coerce the exercise of that choice should be the subject of unfair labor practice charges.

We feel that the individual should be left free to join or not to join a labor organization. We oppose any national labor policy which legalizes any form of compulsory unionism.



We are opposed to violence, intimidation, or threats of such action in the conduct of any labor dispute.

We are in favor of the outlawing of monopolistic practices, whether by unions or employers.

We oppose any statutory provision which encourages union encroachment on management, while forbidding the contrary.

We believe that effective procedures should be developed to end the illegitimate union practices of jurisdictional strikes, secondary boycotts, strikes in violation of contract, and other unjustifiable practices.

We believe in union as well as employer responsibility for the commission of wrongs which are chargeable to them or their representatives.

We believe in effective procedures for the settlement of labor disputes affecting the public welfare.

We believe in a strong, independent Conciliation Service.

We believe in a minimum of Government interference with peaceful labor-management relations within a framework of rules which will adequately delineate and define the rights and responsibilities of both parties.

We believe maximum freedom should be reserved each State to develop such labor relations law as it may in its discretion deem essential.

We think that S. 249 is completely inadequate to the basic purpose of any national labor code equality before the law. It seeks to restrict employers in the conduct of their employee relations in every way that was devised by the Wagner Act, while leaving the unions largely free to perpetrate many abusive practices that should be regulated. We think S. 249 fails to meet the standards of fairness.

Senator DOUGLAS. In view of that, I wonder if you would look at page 22 of your prepared statement on the Conciliation Service, please.

Mr. STEINKRAUS. Yes, sir.

Senator DOUGLAS. I notice that you cite there an alleged address of Secretary Tobin before the Fifteenth Annual Conference on State Law Legislation to the effect that Mr. Tobin said that he wanted a Labor Department which would be "labor's voice in the President's councils."

I think that probably was included under a misapprehension. Secretary Tobin appeared before this committee on the 3d of February, and denied that he had the speech from which the quotation appears, or denied that he had made the statement in question, and told us that it was released by the Department by mistake without authorization, and that he did not, in fact, deliver it. I have talked with a man who was present when Secretary Tobin delivered his speech and he tells me that Secretary Tobin did not say what has been attributed to him. And I think that should be corrected before—

Mr. STEINKRAUS. Senator, I will be glad to see that any statement is corrected which is not accurate.

Senator DONNELL. Senator Douglas, might I interrupt?

My recollection is that Secretary Tobin did not say that it had been released by mistake. I might be mistaken on that myself, but I think he said it was released by his Department of Labor.

Of course, it has appeared in the press, as we know, as emanating from the Department of Labor, and I should like the witness to state, if he knows personally—and if not, I should like to have the liberty of asking any other witness whether or not the witness knows—that Secretary Tobin, if he did not make this statement at the annual conference, did make it elsewhere.

Mr. STEINKRAUS. Senator, I do not know.

Senator DONNELL. You do not know?

Mr. STEINKRAUS. No.

Senator DONNELL. I may desire to interrogate further along this line, not this witness but someone else.

Mr. STEINKRAUS. In fact, I do not think that the remark is of sufficient value to our statement to have us include anything that might possibly not have been said.

Senator DOUGLAS. I wanted to defend the Secretary on this point, especially in view of the fact that he denied making the statement. As I remember it, the Secretary also told the committee that in order that there might be no mistake about the real purposes of the Department of Labor, that he would favor a statutory broadening of its purposes, so that it would no longer be confined to the terms laid down in the act of 1912, which originally set it up.

I mention this in order that the record may be kept straight, and in order that it may not be said of the Secretary that he made this speech, which, in fact, as he states, he did not make.

Mr. STEINKRAUS. Thank you, Senator. I am very sorry if there is anything in here that was not fully justified.

Senator DOUGLAS. I understand.

Mr. STEINKRAUS. But I might say, on this matter of the Conciliation Service, that I have had some personal first-hand experience which I could state more clearly than something that Secretary Tobin may have said.

Senator MURRAY. Mr. Steinkraus, did you prepare this entire statement yourself?

Mr. STEINKRAUS. I did not, sir.

Senator MURRAY. Who collaborated with you in preparing it?

Mr. STEINKRAUS. The staff at the United States Chamber of Commerce, sir. I was requested to present it as the deliberations of—

Senator MURRAY. How many of the staff participated in the preparation of it?

Mr. STEINKRAUS. I would not be able to say, sir. There is a manufacturing department which has labor-relations men in it, but it was, of course, handled by our committee on labor relations originally and submitted to the board, and I might give the chairman a list, and there are plenty available here, of the members of this labor-relations committee.

Senator MURRAY. Understand, I am not making any criticism—

Mr. STEINKRAUS. No, sir.

Senator MURRAY. Of the manner in which it has been prepared.

Mr. STEINKRAUS. Sir, I think that you will notice from the first paragraph of my statement that I say the document which I asked permission to file with you is one representing the carefully considered opinion of the Chamber of Commerce and its labor-relations committee.

Senator DONNELL. Would you mind, Mr. Chairman, letting him put the names of that labor-relations committee in the record at this point?

Senator MURRAY. Yes.

(The roster referred to is as follows:)

#### ACTIVITIES AND MEMBERSHIP OF COMMITTEE ON LABOR RELATIONS

Management-labor relations is a subject of primary importance in the affairs of the Nation. The committee on labor relations undertakes to give the subject the major attention which it deserves.

Possible avenues for better management-labor relations in the community, needed changes in the Nation's labor laws, search for ways of giving society a correct understanding of employer-employee matters, and the development of principles to guide employers in relations with their employees are among the things which receive the committee's careful study.

The committee recognizes that employer-employee relations are not static; that, like all human-relations problems, they vary with changing times and conditions; and that the program of the Committee requires constant adaptation to these changes.

The diversified types of business represented on the membership of the committee give it versatility in handling its program.

Richard K. Lane, Chairman, Tulsa 2, Okla., president, Public Service Co., of Oklahoma.

Stanley C. Allyn, Dayton 9, Ohio, president, National Cash Register Co.

H. W. Anderson, Detroit 2, Mich., vice president, General Motors Corp.

Garret L. Bergen, Chicago 9, Ill., division vice president-personnel manager, Marshall Field & Co.

L. R. Boulware, New York 22, N. Y., vice president, General Electric Co.

H. Russell Burbank, Brooklyn 5, N. Y., president, Rockwood & Co.

Fred W. Climer, Akron, Ohio, vice president, Goodyear Tire & Rubber Co.

B. D. Davidson, Baltimore 3, Md., vice president, Davidson Transfer & Storage Co.

Richard P. Doherty, Washington 6, D. C., director, employer-employee relations division, National Association of Broadcasters.

Franzy Eakin, Decatur, Ill., vice president, A. E. Staley Manufacturing Co.

H. S. Hardin, New Orleans 7, La., president, Hardin Bag & Burlap Co.

Carl B. Jansen, Pittsburgh 25, Pa., president, Dravo Corp.

Howard S. Kaltenborn, New York 20, N. Y., director of industrial relations, Curtiss-Wright Corp.

Robert P. Koenig, Indianapolis, Ind., president, Ayrshire Collieries Corp.

J. D. Lippman, Toledo, Ohio, president Textileather Corp.

Dean H. Mitchell, Hammond, Ind., president, Northern Indiana Public Service Co.

Evans A. Nash, Oklahoma City 4, Okla., president, Yellow Transit Company.

H. M. Ramel, St. Louis 8, Mo., vice president, Ramsey Corp.

Thomas R. Reid, Baltimore 2, Md., vice president, McCormick & Co.

Almon E. Roth, San Francisco 4, Calif., president, San Francisco Employers Council.

Otto A. Seyferth, Muskegon 48, Mich., president, West Michigan Steel Foundry Co.

Charles E. Shaw, New York 20, N. Y., manager, Employee Relations Overseas, Standard Oil Co. (N. Y.)

Thomas G. Spates, New York 17, N. Y., vice president personnel administration, General Foods Corp.

Hoyt P. Steele, Des Plaines, Ill., vice president, Benjamin Electric Manufacturing Co.

John A. Stephens, Pittsburgh 30, Pa., vice president, United States Steel Corp.

W. H. Winans, New York 17, N. Y., industrial relations manager, Union Carbide & Carbon Corp.

William B. Barton, secretary, committee on labor relations, Chamber of Commerce, United States of America.

Senator MURRAY. It would be impossible for you to pick out the particular contributions made by the different men on your committee or staff that prepared any particular parts of this statement?

Mr. STEINKRAUS. Yes, sir; it would.

Senator MURRAY. But the statement is presented as the statement of the Chamber of Commerce?

Mr. STEINKRAUS. Yes, sir.

Senator MURRAY. And resulting from the combined work and contributions of the various men included in this list that you have filed?

Mr. STEINKRAUS. Yes, Mr. Chairman.

May I clarify, or may I elaborate on one point in my original statement?

I was anxious to stay strictly within the 10 minutes. I would like to elaborate a little on how the chamber proceeds on these matters, and I would like to read a few excerpts from a monograph, No. 26, of the temporary national economic committee, of March 1941, in which they



analyze the various institutions and what they are for. For instance—and this is what they say about the chamber:

The reason for the founding of the Chamber of Commerce is shrouded in no mystery. It was set up primarily to let the Federal Government know what business was thinking.

President William H. Taft and Secretary of Commerce and Labor Nagel in 1912 invited businessmen and representatives of their organizations to Washington to "work out a plan by which Government could get the advice and counsel of business opinion."

Not only Congress but also the President and his Cabinet, bureau chiefs and heads of the independent agencies are thus informed of collective business opinion.

The Chamber of Commerce provides elaborate means for consulting, crystallizing and disseminating the beliefs and desires of its members. Through a continuous process of fact-finding, organizing and digesting, the president and board of directors keep its members supplied with material on at least two sides of public questions and provide for periodic consultation of the chamber's collective mind thus constantly fertilized.

In other words, I am simply an agent present, to give you, sir, the collective judgment of the labor relations committee and the chamber policies. If the chairman or members of the committee would like to have the booklet which gives all of our policies, which are regularly published, we will be glad to put that into the record.

Senator MURRAY. The chamber heretofore, in years past, gained the reputation in the country as being ultraconservative; is that right?

Mr. STEINKRAUS. I do not think so, sir. I think the chamber has been forward looking in many of its policies.

Senator MURRAY. Through all of its entire existence?

Mr. STEINKRAUS. It seems to me that it has taken its responsibilities seriously and has, by operating—

Senator MURRAY. How long have you been connected with the chamber of commerce?

Mr. STEINKRAUS. Well, I have been a director for 5 years.

Senator MURRAY. Five years. Were you a member of the chamber of commerce before that?

Mr. STEINKRAUS. Yes, sir.

Senator MURRAY. In some local chamber or some national chamber?

Mr. STEINKRAUS. I was active in chamber work all my life.

Senator MURRAY. Well, a lot of us have been. For instance, I have been a member of the chamber of commerce myself, and I know something about how they operate in some parts of the country.

Take, for instance, in some sections the large corporations manage the chamber of commerce through having multiple memberships in it. They control the activities of the chamber almost completely.

They determine who the secretary is to be, and determine all the policies of the chamber, and also direct and control their activities.

That is true in many sections of the country, is it not?

Mr. STEINKRAUS. I do not know, sir, but I would say that the chambers of commerce that I know of, and I have been to a great many throughout the country, have divisions of different kinds of members, and one class of member that is always very much represented is the retailer.

Senator MURRAY. Yes; they always have retailers.

Mr. STEINKRAUS. And they have other groups represented.

For instance, in our own organization, in these 3,050 chambers of commerce and trade associations, another classification can be made,

such as this: We have 19,674 different types of individual and associate members of which less than a third are manufacturing members.

Senator MURRAY. Yes.

Mr. STEINKRAUS. We have departments of construction, agriculture, natural resources, finance, insurance, domestic distribution, transportation, manufacture, and foreign commerce.

We serve each of those groups of our economy and get information from each, so that our viewpoint is on a much broader base than most any other organization I know of.

Senator MURRAY. Well, it is true, nevertheless, that while you have retailers and all these other activities in the chamber of commerce, you also have the very large corporations which in many instances control and determine the policies of the chamber.

Mr. STEINKRAUS. Well, Senator, I would not say that is true. I think if you look at this labor relations committee, you will find not only representatives of large corporations, but also the heads of some pretty small companies who handle their own labor relations.

Senator MURRAY. Well, this is in reference to the national organization.

Mr. STEINKRAUS. Yes, sir.

Senator MURRAY. I am thinking now of local organizations, chambers of commerce in a town, for instance, of a population of, say, 50,000, where they would have a great many retailers as members, but there would be one or two huge corporations that would be the dominant interest of these in the community, and they would exercise a controlling influence over the local chapters, the local chambers.

Mr. STEINKRAUS. Well, Senator, that is not my experience.

Now, take the town of Bridgeport, Conn., where I live, which is strictly an industrial town, as you know.

I think it ranks ninth in the country as an industrial center. It is a city of only 150,000 people, and it has such large organizations in it as General Electric—General Electric having a large plant there. I think for a period of 10 or 15 years there was no representative of General Electric on the board of directors in that local chamber, but retailers and small manufacturers were very active.

Senator MURRAY. I have no knowledge of any particular chambers back here. I am just thinking of my own experience, and that has been my experience and understanding of the way in which the chambers of commerce operate.

For instance, out in the States where the power interests, for instance, are very influential as a factor, they determine the policy of the chamber of commerce with reference to the question of public power, and as a general rule have a powerful influence in the community, and publicity, and so forth, in connection with these problems which come up—

Mr. STEINKRAUS. Sir, I could not speak for the individual chambers, but I do know that on the board of the national chamber here there is a broad representation of many different interests. I have never sat on a board of any group in which there is such thorough and such broad discussion of public questions.

Senator MURRAY. But there is very little possibility for small-business men, little retailers, who belong to individual chambers of commerce around the country, being able to represent any active influence

upon the National Chamber of Commerce because, as a general rule, they do not come to their meetings. The delegates from the different States are usually men connected with the larger corporations and institutions.

Mr. STEINKRAUS. No, sir; I do not think that is correct.

Senator MURRAY. It is not?

Mr. STEINKRAUS. No, sir.

Senator MURRAY. Well, that is my understanding.

Mr. STEINKRAUS. I have gone to meetings.

Senator MURRAY. Has there ever been any study made of the National Chamber of Commerce, such as has been made of some other institutions in the country?

Mr. STEINKRAUS. You mean analyses of its membership?

Senator MURRAY. Analyses of its activities.

Mr. STEINKRAUS. I think there are, sir.

Senator MURRAY. And of how it operates and how it purports to treat economic problems?

Mr. STEINKRAUS. I think this very one from which I quoted, a Government committee, Temporary National Economic Committee, which made an investigation as to the influence of the various organizations upon Government thinking—

Senator MURRAY. Yes.

Mr. STEINKRAUS. I think that statement is a very clear statement that the chambers' methods of gathering information, digesting it, and offering it in the form of recommendations is a very sound one.

For instance, it says:

The chamber maintains that it "does not sponsor specific legislative measures. It gives counsel as to policies." In performing this role of adviser, the resolutions and referenda department arranges for the appearance before congressional committees of delegations to present chamber views.

So, in this case we are not trying to recommend any particular legislation; we are trying to give advice as to the policies which our underlying membership of a million and a quarter businessmen throughout the country over a period of years has developed on sound labor thinking and labor-management relations, I think the only reason I am here is because I have been very vitally interested in the subject for many years.

I have done my own bargaining in my own plant for almost 10 years. I have been on the President's Labor-Management Committee, and on the Twentieth Century Fund's committee, and the National YMCA, because I think this problem has got to be solved. It has got to be solved on a fair and square basis with respect to both parties.

Senator MURRAY. Well, has not the National Chamber of Commerce in its earlier history been opposed to a lot of progressive liberal legislation which was finally passed, and which has finally become embedded in our laws, in the laws of this country, and has been very beneficial to this country, and yet they have opposed such legislation in the first instance?

Mr. STEINKRAUS. Well, Senator, that question was raised this morning when another witness was on the stand.

Senator MURRAY. Yes.

Mr. STEINKRAUS. And I had a little check-up made this noon as to how far back the United States Chamber of Commerce has been on record with respect to favoring the organization on the part of work-



ers, and the first book of policies in which it has been published was in 1919. Now, that is pretty far back, that is 30 years ago, when they first went on record as a national chamber that they favored the right of workers to organize.

Now, in more recent years, let me mention a few of the important issues which we have supported. We have supported the social-security measures, the reciprocal-trade agreements, fair farm prices, the ERP, the United Nations, to mention a few of those in the last few years that our national chamber has passed resolutions upon as favoring, endorsing, and working for.

Senator MURRAY. Did you support the Wagner Labor Relations Act when it was originally enacted?

Mr. STEINKRAUS. I cannot say, sir. I do not have that information available, but I would be very glad to get it for you.

Senator MURRAY. I was just trying to get your general idea of the operations of the chamber of commerce, and I had in mind my information and knowledge of how they operate in the field, and I have always found that they have been opposed to people in public life who have been advocates of liberal legislation, especially in the field of labor relations.

Mr. STEINKRAUS. Senator Murray, you have been here a good many years, and I recall that a few years ago, Eric Johnston, the then president of the United States Chamber—

Senator MURRAY. Yes.

Mr. STEINKRAUS. Tried very hard to get a charter for labor and management, in the deep interest of trying to bring about better relations.

Senator MURRAY. I had him in mind when I started to cross-examine you, when I thought that the liberal attitude of the chamber of commerce dated from the time that he came into the chamber of commerce.

Mr. STEINKRAUS. It may have been. I do not know; I cannot speak for it.

Senator MURRAY. He brought considerable reforms into it, and has made it a more liberal institution.

Mr. STEINKRAUS. Do you not think the whole country has gotten a lot more intelligent on the handling of labor-management relations?

Senator MURRAY. Well, they were getting that way prior to the Taft-Hartley Act. [Laughter.]

But it seems to me that they reverted to their original state during the war, when these different problems came up, and when labor began to agitate for better wages, and so forth, and then we began to find that these organizations had reverted a little to their former attitude toward labor.

Mr. STEINKRAUS. Well, Mr. Chairman, the thing that is in my mind, and I have given a lot of thought to it and I have had some occasion to speak about it a little bit, is that before the Wagner Act days, management had exercised such control over its workers that the workers needed some support. They received it in the Wagner Act.

Senator MURRAY. Yes.

Mr. STEINKRAUS. That gave them a fine opportunity to organize, covering matters such as wages, hours, and working conditions.

As usual, some abuses crept in.

Senator MURRAY. That is right.

Mr. STEINKRAUS. And over the period of the next 12 or 13 years, there were some abuses that were very harmful to the public interest and certainly to the general economic interests of the country. In the Taft-Hartley law there were long, long hearings in which those abuses were pretty clearly defined and presented to the Members of Congress.

I remember hearing some of those things that happened down in Philadelphia and elsewhere. It was perfectly obvious there were abuses which needed correction.

Senator MURRAY. Yes.

Mr. STEINKRAUS. Therefore, the next step was made to try to correct some of those abuses, and that was the Taft-Hartley law.

Now, to go back does not seem to us to be right; we should go ahead and improve upon it.

Senator MURRAY. No one wants to go back, but we want to get away from the arbitrary provisions of this act which weaken labor and which do a disservice to the country because it has created a very bitter feeling in the country as a result of the drastic measures; the witnesses who came before the committee when we were studying this act, many of the best witnesses in the country, most expert in labor relations, warned us against that kind of legislation, even the Governor of Minnesota, who appeared here before the committee, warned that the act should not be punitive in its character; and that it would be an unwise thing to put provisions in there that would have a tendency to weaken labor and make it ineffective at the bargaining board. That was the condition of this country following the First World War, and those conditions contributed in a large measure to the depression that came on.

Mr. STEINKRAUS. That is true, Mr. Chairman.

Senator MURRAY. In that period.

Mr. STEINKRAUS. But I have seen these laws work in a large industrial community, and I think that when we speak of labor we must remember that labor is not all the same. Labor leaders may dislike some things that labor members like, which is always true.

Now, I know in my experience in my own plant where we have had unions ever since 1937—and, certainly, they came in there because of the Wagner Act—I remember very well that management in the country was not accepting, as you mentioned this morning, this act reasonably, but they did learn, and I think they learned pretty fast.

Senator MURRAY. Well, I have heard it often stated that when the Wagner Labor Relations Act was enacted, the trouble was that we did not go forward at that time and provide a much stronger Mediation and Conciliation Service to have aided them in their bargaining activity. It was said that we just passed the act and then turned them loose, and no satisfactory assistance was given in the field of helping them to bargain.

Mr. STEINKRAUS. I think that is true. I remember—

Senator MURRAY. If that had been done, some of the people claim—some of the best experts in the country claim it would have been a different story, and I am just as strong as you are in favor of bringing about conditions in this country where we are going to have industrial peace, which is so important to production that if we do not, if we keep on in this bitter battle between labor and management it is going to have a very disastrous effect upon the economy.

Mr. STEINKRAUS. Certainly.

Senator MURRAY. We want to improve the conditions, and I do not think you are going to improve them by turning them around after the Labor Relations Act—the Wagner Labor Relations Act—was enacted, and trying to blame all of the wrongs and troubles which developed during the war there, for instance. I think it was a bad period for you people to begin to think of as period in which you should strike out the Wagner Relations Act, and then——

Mr. STEINKRAUS. Well, Mr. Chairman, honestly now, we did have a tough time in those years.

Senator MURRAY. You did not have it any tougher——

Mr. STEINKRAUS. Take conciliation, for instance.

Senator MURRAY. You were making money all the time, getting rich, and the rest of the men, the rest of the people in the country were really suffering.

Mr. STEINKRAUS. I do not know, but you are talking to the wrong people about getting rich. I did not make much money.

Senator MURRAY. We were paying high prices for everything and there was great unrest and dissatisfaction, and labor began to agitate for better wages and working conditions.

Mr. STEINKRAUS. Mr. Chairman, we are here to try to be helpful. I think we owe it to you to present management's viewpoint.

Now, you take, for instance, this matter of the Conciliation Service. I have had quite a number of years' experience with the Service, and I can remember back when John Steelman was the Director of Conciliation. John did an admirable job, but that did not stay that way. There were changes in that department; the situation got pretty bad. I was on the committee, an advisory committee, for the Conciliation Service, and I thought it was degrading into a——

Senator MURRAY. I would like to see a complete analysis made.

Mr. STEINKRAUS. And I think with a man like Cy Ching, now you have got a Conciliation Service that is really functioning.

Senator MURRAY. Well, we had one before that was really functioning. We had an Assistant Director of the Conciliation Service on the stand here the other day who gave us a very vivid story of the activity of the Conciliation Service, and it seemed to me that he made a very strong, powerful statement in support of the Conciliation Service, but I do not wish to pursue this.

Mr. STEINKRAUS. Mr. Chairman, you may not have had this idea presented, and I have not found anybody accepting it readily, but this matter of labor-management relationship is a developing thing. We have got to make progress.

I wonder whether one of the reasons that some of these departments have been removed from the Department of Labor is not because the way the Department of Labor is constituted today it is too much in line with what was needed 30 years ago. But it also might be developed in this change. Its legal status of being there only to back up the wage earner might very well be broadened——

Senator MURRAY. I do not think the Labor Department——

Mr. STEINKRAUS. To advance labor-management relations.

Senator MURRAY. I do not think the Labor Department is there merely for the purpose of backing up labor. I do not think that is a fair statement.



Mr. STEINKRAUS. If it were possible to get the law to state that the Government's job in the Department is to further better labor-management relations, I think it would be a great step forward to have all of these different Services go back in.

Senator MURRAY. But by furthering better labor relations, it is performing a service for business, for industry, because nothing is more important to industry and business than that we have good sound labor relations and labor peace.

Mr. STEINKRAUS. That is true.

Senator MURRAY. And a proper labor department would have that in mind, it seems to me, and if you had permitted the Conciliation Service to remain in the Labor Department and to give it sufficient funds to establish a strong service there, under the Wagner Labor Relations Act, we would not have had the trouble we had.

Mr. STEINKRAUS. Well, Senator, I am sorry to say that just before the Taft-Hartley law changed that, the Conciliation Service was not in good shape.

Senator MURRAY. Well, that is your view, and we have other witnesses.

Mr. STEINKRAUS. I say that from first-hand experience.

Senator MURRAY. I will not pursue the examination any further.

Senator HILL. Let me ask the witness a question.

Mr. STEINKRAUS. Yes, sir.

Senator HILL. This hearing, of course, like so many hearings, has had many matters brought in that were in a way not too germane, some of them perhaps extraneous. But after all is said and done, in the consideration of this legislation, we finally come down to the very definite and specific things.

Mr. STEINKRAUS. Yes, sir.

Senator HILL. We come down to a specific thing, for instance, such as whether strikers who are on economic strike, that is, involving wages or something of that kind, whether or not they should have a right to vote while they are out on strike. And we come down to a question of whether or not all sympathetic or so-called secondary-boycott strikes should be outlawed, whether this question of injunctions should be considered. Is there any change at all in your statement, your prepared statement—you did not get to read it, I realize, for the sake of brevity, and that you boiled it down—but is there any of those points where you recommend any change in that? Do you make any recommendations for changes in that?

Mr. STEINKRAUS. In the act?

Senator HILL. Yes.

Mr. STEINKRAUS. We recommend that a number of changes be made toward clarifying. I did not have a chance to present it in this statement, but we do recommend in some cases clarification, and we also believe—

Senator HILL. Clarification?

Mr. STEINKRAUS. We believe that in your deliberations here, if you get those viewpoints, you are going to find some other things that have not been working too well.

Senator HILL. Well, you used the term "clarification." You mean to make clear something that exists or to make a change in something that does now exist? For instance, take this question of not permitting strikers who are out on economic strike, economic strikers, to have

a right to vote on a Labor Board election. Do you think that provision ought to remain as it is, which denies to those strikers the right to vote?

Mr. STEINKRAUS. Well, Senator, as a representative of the chamber, I do not have any information on that particular point. I am not sure it was even discussed, but I know——

Senator HILL. Of course, that is one of the most important questions before this committee.

Mr. STEINKRAUS. I think there are some important questions. For instance, the matter of freedom of speech is an extremely important one, and I think it ties in with this.

For instance, if the strikers are out on strike—have been put out on strike without having a chance to vote whether they go out on strike—they are quite a different group than if they did go out on strike with a reasonable chance to vote, and with a reasonable chance to have a whole story told them by management.

Now, this matter of freedom of speech at a time like that is extremely important, and is tied in with it, and I do not think you could make any broad statement on that thing.

Senator HILL. I think you could. You get off on freedom of speech now, that is a separate proposition, and I admit——

Mr. STEINKRAUS. It ties in this matter of strikers being out.

Senator HILL. This is one of the questions this committee has to consider, the question of what we call freedom—what has been called freedom of speech by the employer.

Then, the question comes up——

Mr. STEINKRAUS. I could give you some first-hand experience.

Senator HILL. Whether or not economic strikers should have a right to vote.

Mr. STEINKRAUS. Well, Senator, let me give you a first-hand experience if I may.

In our plant we had a union which was a pretty bad union. For years it was a Communist-dominated union, and they wanted to put our people out on strike for a number of years, and the people did not want to go out on strike, and we insisted on seeing to it that they would have a chance to vote on the issue. When they voted on the issue, they did not go out on strike.

Senator HILL. Very well. They did not go out on strike.

Mr. STEINKRAUS. And all kinds of rumors started in the plant of things that we were going to do, and people were very much upset; because of the freedom of speech we were able to tell those people the facts about those things. Now, you do not deny the fact that that is a good thing, do you?

Senator HILL. What you have said, of course, is true as a statement of fact, but it does not draw it off toward this question of economic strikers. Your strikers did not go out on strike.

Mr. STEINKRAUS. No, but if they had——

Senator HILL. And then also you brought in this question of communism. Of course, we know that today if we want to condemn anything, why, what we do is, if there is an element of communism in it, bring out that element.

Mr. STEINKRAUS. I did not mean to mention the word. I did not mention it in my statement, but it was a factor in this particular one.

Senator HILL. It was in this particular case, but your answer does not go to the question I asked you, of whether or not you think that economic strikers ought to have the right to vote in an election before the Board.

Mr. STEINKRAUS. My personal opinion would be that it would have an awful lot to do with the conditions under which they went out. If they went out and had been forced out, that is one thing. If they went out——

Senator HILL. If they had not had an election in which they voted, the majority voted to go out on strike, and they all went out?

Mr. STEINKRAUS. Well, Senator, it may be a point of extreme importance, an extremely important issue, but I am in no position to advise you or the committee in any well-thought-out idea on the point, and I prefer not to do so.

Senator HILL. Very well.

Senator DOUGLAS. Mr. Steinkraus, I want to say before I begin I know you have a reputation for being a very fair-minded man, and everything that I know about you bears that out.

Mr. STEINKRAUS. Thank you, Senator.

Senator DOUGLAS. Do you think there are any features of the Taft-Hartley law which are too harsh?

Mr. STEINKRAUS. Senator, there is one of them that is an extremely important one, and which, only from a personal standpoint, would I wish to speak on.

I could not speak for the chamber, and that is this problem on the closed shop. That is a very difficult one to figure out.

There are unions which for many, many years have had the closed shop, especially in the building trades and in similar crafts. They have the responsibility of furnishing a certain number of people on the job.

It seemed as though the unions needed some authority to go with that. On the other hand, the limitation of apprentices caused a lot of trouble. So, perhaps in keeping with the idea that apprentices should be able to choose from the standpoint of a broad Americanism, any profession or job that they wanted to go into, but also that they would have to join the union, the union shop in that respect was more fair.

Now, I have discussed this with the laboring people in our section of the country, both A. F. of L. and CIO, and I have the impression that the CIO has been a little confused on it.

Now, take, for instance, a carpenter: If he is working on this house for a few days, on that house for a few days, how is he going to do that unless the union has not only the responsibility but the authority to send him? But if that same carpenter would work in my plant, and he has 50 weeks of work a year, he comes every morning at 7 o'clock and quits at 3, he does not need the same kind of union security or assistance and, therefore, maintenance of membership seems to do that job all right.

Senator DOUGLAS. Then you think that possibly the prohibition of the closed shop may be too severe?

Mr. STEINKRAUS. I think that probably there has got to be a better substitute for it if it is going to be worked out.

Senator TART. For the present provision of the law.



Mr. STEINKRAUS. That is right. I think personally that the closed shop is un-American. I just do not think anybody should be forced to join. I think the union is O. K. If they want to have the closed shop after a fellow gets a chance to take a job, that is O. K.

Senator DOUGLAS. Now let us come to the union shop, then.

Mr. STEINKRAUS. This is a personal opinion.

Senator DOUGLAS. Under the Taft-Hartley law, an election is required before a union can even ask for a union shop. Is that too severe?

Mr. STEINKRAUS. I do not think it ought to be made too difficult for them to ask for it.

Senator DOUGLAS. Well, at present they cannot ask for it unless there has been an election.

Mr. STEINKRAUS. I recognize that.

Senator DOUGLAS. Do you think that it is fair that in that election all those who do not vote are counted as voting no, even though if present they would have voted yes? All absentees, all sick persons are counted as voting no.

Mr. STEINKRAUS. That is the problem. Let me illustrate our problem in our own plant. Here we are an old New England business formed in 1865. We have people who worked there for 50 years.

Now we have had a union for 12 years. Some of those oldtimers, a lot of them, are not for it. They are first generation in this country. They have never belonged to a union.

Suppose we had to have a union shop and we would have to take the 350 people who have been with us 25 years or longer and say, "You cannot work here any longer unless you join the union."

It just does not seem as though that is fair, either. In other words, they ought to have a right to vote as to whether they are going to be forced into a union shop even if they are not members of a union. It seems to me that it should be tough for that kind of a person, because you are going to make him do something that for 25 or 35 or 40 years he has not had to do.

Senator DOUGLAS. Do you think that in that election all absentees should be counted as voting no?

Mr. STEINKRAUS. No; I do not think the rules ought to be unreasonable—

Senator DOUGLAS. That is the provision of the present law.

Mr. STEINKRAUS. My personal opinion is that that needs a tremendous amount of attention and if there were some fair way by which the craft unions could be given a more reasonable thing, without it being forced on every other union where the same circumstances do not prevail, where the same need does not exist—I do not know enough about it. I am not a lawyer. I am only a businessman, but it seems to me that there are two separate and important problems to be treated in different ways. Thus you would take industries that have worked for so many years under a closed-shop provision and not change its operation so radically that is not something very different than what it had before, and that would cover one aspect. Then it seems to me you could limit this treatment and say, well, in those places where unions really serve so much as to have a great responsibility, they have got to have the authority to go with it, but that it shouldn't be extended into every other place where that same respon-

sibility is not existing, and therefore the same degree of supreme control is not necessary.

I am not giving you an answer, but I have been thinking about it. I have discussed it with some labor people. I think there is a difference in those two situations; that if it were possible for you to clarify this law, it would be a forward step.

I think Mr. Green and his people probably hate the Taft-Hartley law more because of this closed-shop issue than all the rest put together because it struck at the very thing that they had for so many years.

Senator DOUGLAS. Mr. Steinkraus, what do you think of the provision that you will lay down national standards of what constitutes restraint or coercion instead of letting those standards be determined wholly by the police and by the local judges and so forth? How do you feel about that?

Mr. STEINKRAUS. Senator, we have had in our State, as you know, some bad experiences and some good experiences. The local police vary greatly in their interpretation of their responsibility to the public. State police have been called in some places to do the job the local police should do.

In a period of excitement where almost a mob spirit is created, local police are apt to get scared off pretty easily. I think if there is a broader method of treating it so that there is a national regulation of it, maybe not down to the last dot, but certainly there ought to be shaded in the law the spirit that these things, these violences should not be permitted—

Senator DOUGLAS. That is illegal now, illegal under common law and illegal under most police ordinances.

Mr. STEINKRAUS. It is like the fellow in jail. His lawyer says, "They cannot do this to you." "Well, I am in here just the same."

Senator DOUGLAS. You would favor nationalizing provisions concerning restraint and coercion and imposing national penalties?

Mr. STEINKRAUS. You are speaking about violence, threats of violence, intimidation, that sort of thing. Is that what you are referring to specifically?

Senator DOUGLAS. I am opposed to mass picketing. I am opposed to violence. I am opposed to threats of violence. I think anyone should be, but the question is finding the line between peaceful picketing on the one hand and threats of violence, actual violence, on the other, and that is a difficult line to draw.

Mr. STEINKRAUS. It certainly is. I have seen both kinds in Bridgeport, Stamford, and New York. I think it is fairly easy to tell where you go overboard on the thing.

Senator DOUGLAS. Can that not be told better locally than to have national standards?

Mr. STEINKRAUS. Well, it seems to me that human behavior is not so different in different sections of the country. I do not think the local thing on that particular subject is as important as it is on some other things.

For instance, I think that where climate and general advancement of the community, the degree of industrialization or something like that affects some law, it has got to be taken into consideration, but where human behavior is concerned I think you find them pretty much the same all over the United States, and if you can say you cannot go this

far in mass picketing. it ought to apply whether it is in Chicago, Bridgeport, or anywhere else.

Senator DOUGLAS. Mr. Steinkraus, I want to say again—and I am not trying to butter you up—you have a very good reputation as an employer, a man who is a straight shooter.

Mr. STEINKRAUS. We try very hard to get our employees' viewpoints.

Senator DOUGLAS. Suppose you get an employer who is antiunion. Is it not possible for him in the event of a strike to call for an election? It certainly is possible under the act. The Board grants the election. Then when the election is held it is the replacements who vote and not the strikers. Under those conditions would not the replacements—

Mr. STEINKRAUS. I think it is very unfair, Senator. I do not think there would be anything fair about that.

Senator DOUGLAS. That is the provision of the law.

Mr. STEINKRAUS. I think maybe that is one you ought to change. I am going overboard the other way.

Senator DOUGLAS. Now we are making progress.

Senator HILL. Did you recommend that in your statement here?

Mr. STEINKRAUS. I am not sure, sir, and I told you before I am expressing personal viewpoints on this.

Senator HILL. I am sorry you are here to testify for the chamber of commerce rather than for yourself.

Mr. STEINKRAUS. This is a very able statement of the chamber of commerce in which they felt that they were limited to discussing first the provisions in S. 249. There are not very many provisions in it to discuss. You will have to admit that.

It just means wiping out the Taft-Hartley law and going back to the Wagner Act.

Senator MURRAY. Is not that one of its virtues, that it has not many provisions? Do you not think most of these laws are too complicated and technical?

Mr. STEINKRAUS. Well, Senator, you are a very able man and a very nice gentleman. I appreciate the way you handle a hearing like this, but I must say that I think we should not go backward. I think we should go ahead on this legislation.

I think we ought to keep the good stuff, improve on that that has not proved effective, and let some of it ride a little while longer because it is only 18 months ago that it was put in effect.

Senator MURRAY. If you came here during the time of the Taft-Hartley debate, I would agree with you 100 percent. The trouble is we went backward when we enacted the Taft-Hartley Act. If we had taken the Wagner Labor Relations Act as it was and made a few necessary amendments to it and then provided a strong conciliation and mediation service, we would have had the thing licked.

Mr. STEINKRAUS. I cannot speak very well on that, Senator, but I can say this: That from first-hand experience sitting across the bargaining table, which I started to do in 1939—because I wanted to know—I felt that top management is responsible for the situation in his plants and the only way to know is to get right in there and deal with them. I felt that the Taft-Hartley law helped as far as our employees and as far as our community is concerned. It did not hurt



except in these craft trades and so on where the battle of the closed shop against the union shop existed.

Senator MURRAY. The Senator has just given us two illustrations where it makes hardship on labor, and if allowed to continue it would break up labor unions in the United States eventually.

Senator DOUGLAS. May I just ask a couple of more questions?

Senator MURRAY. Yes; go ahead.

Senator DOUGLAS. Now I know you would not do this. Mr. Steinkraus, but is it not possible under the Taft-Hartley law for an employer to ask for an election once every year, at 12-month intervals, and therefore could not the employers who desired to do so, keep unions subjected to a constant series of elections which would tend to wear out the patience of the men, until finally they might throw up the sponge and say, "What is the use?"

Mr. STEINKRAUS. Well, Senator, it seems to me that there are an awful lot of management people whom I know who have come to the realization that working well with the union is a good thing for their plants.

Senator DOUGLAS. But unfortunately——

Mr. STEINKRAUS. And that therefore the cost of this change, upsetting of their people, even the cost of training new people all the time is an extremely expensive thing. A lot of companies would go broke if they had to keep on training new help.

Senator DOUGLAS. But unfortunately you know as a practical man that there is a large section of American employers who have never accepted the principle of collective bargaining. They are unlike you.

Mr. STEINKRAUS. I do not know who they are. I think that as far as my own experience is concerned, all high-grade companies today recognize it as necessary. I do not know of a single high-grade company in my experience that does not realize they have got to take it and they ought to learn how to use it and use it effectively.

It is some of the smaller independently owned outfits that still are pretty much opposed. I have been in meetings where there have been hundreds of industrial relations people, and it is always the fellow that has always been his own boss and run his own shop that still would like to have that.

I was before a large meeting of the YMCA directors of the National YMCA recently discussing this matter of how the YMCA could help to do a better job, getting better relationships on the board of directors, labor leaders, and so on. The only fellow who had any objections to it was the fellow that runs his own plant and just does not think this is here to stay. I do not find, in general, industrial leaders who are anxious to make it as tough as they can for unions.

All they want is fair rules so they get a fair chance to speak to their employees and not to be crowded into a bad situation. Now I may be overrating them, but that is the way it looks to me.

Senator DOUGLAS. We all hope you are right, but of course you may have a will to believe this. Suppose now, however, we were to have a period of unemployment—which none of us want—and a plentiful labor supply. Do you not think possibly a good many employers would get the idea into their heads that this might be a chance to shake themselves loose from unions and would not the Taft-Hartley law help them to do that?

MR. STEINKRAUS. I think it is one of the most serious things that could happen. I hope that we do not use scare stuff right now because business is off a little bit. I believe that the degree to which labor and management have learned how to work together is going to determine how we go through this present period of a slight recession from the top of the business we had in 1948.

Personally I think that some labor fellow who was on the radio the other day and said it was going to increase the amount of trouble, is not necessarily right at all. I think that closer cooperation is necessary at a time like that, and I am hopeful that enough people know that they have got to do it because management does not gain by having a troubled shop. Management does not make any money out of having a disrupted organization, and the chances of making money are not as rosy as you hear in the papers. My company is having an awful battle making a reasonable return on its investment.

Senator DOUGLAS. Just one more question and then I will stop. Unions under this act are made financially responsible for the acts of their agents.

MR. STEINKRAUS. Yes.

Senator DOUGLAS. Have you given some thought to the interpretations which the counsel of the Board is giving to the term "agent"?

MR. STEINKRAUS. Well, I think there is another point on which the thing should be clarified. My personal opinion is that if you try to stretch that point, any member being an agent, you are going to be in trouble.

Senator DOUGLAS. Is it not a fact the counsel has ruled pickets are agents?

MR. STEINKRAUS. I think that is an overstretching of the situation.

Senator DOUGLAS. Those are the rulings.

MR. STEINKRAUS. I think the responsibility of unions as well as of management is essential. When it comes to permitting the interpretation that any fellow who happens to do something bad during a period of an emergency should also be accounted for by his union leaders, that is going too far.

Senator DONNELL. What case is that?

Senator DOUGLAS. I can find the citation.

Senator DONNELL. Would you mind furnishing those to us so we may interrogate, not this witness necessarily, but others.

Senator DOUGLAS. Is it not true that the American Federation of Labor, which in about one-third of its contracts had no-strike clauses, felt that this term "agent" might be used so broadly that the acts of individual members in staging a wildcat strike, even though disapproved by the unions, could be used under the act as a ground for suit against the unions; that the American Federation of Labor felt compelled to advise its member unions that they should not sign any no-strike clauses, so that the adjudication of disputes during the life of a contract, which we all desire and which was progressing pretty well, was set back by the Taft-Hartley law?

MR. STEINKRAUS. Well, Senator Douglas, you hear so much information here that you really know more about what is going on in the country at large, but let me say in our own case we have an A. F. of L. union today and we have got the best no-strike no-lockout clause we ever had. It was just signed in December, so apparently they are not going the entire limit on it. We have got the best clause we ever had.

Senator DOUGLAS. It is a matter of record that the general counsel of the A. F. of L. advised the A. F. of L. unions that they should not sign no-strike clauses because of the fact that if they did——

Mr. STEINKRAUS. Apparently this crowd did anyhow.

Senator DOUGLAS. Wildcat strikes by individual members could be used as grounds of suit against the unions themselves.

Mr. STEINKRAUS. There has got to be a reasonable balance in these things. There has got to be a fairness to both sides.

The extreme interpretation either way is the thing that causes trouble, and that is why I think if we go back to the Wagner Act alone, then we are going to be too far that way. I think we have got to go ahead from Taft-Hartley. Keep what is good, do some improving of those things that are not right, and make a further step forward. But I think it cannot be done on a political scrap basis. It has got to be an economic analysis of the situation.

Senator DOUGLAS. For the benefit of my good friend, the Senator from Missouri, I would like to cite two cases in which a rather broad interpretation has been given to the term "agent", the Colonial Hardware Flooring case——

Senator DONNELL. The citation of that, Mr. Senator?

Senator DOUGLAS. 5-C-B-4, and the Smith Cabinet Manufacturing Co.

Senator DONNELL. The citation of that, please?

Senator DOUGLAS. I do not have the citation of that.

Senator DONNELL. Do you have the year or the approximate date of it?

Senator DOUGLAS. Senator Donnell, I am never quite able to answer all the detailed questions which you give me.

Senator DONNELL. I think that is rather important.

Senator DOUGLAS. We will find that for you.

I was going to make a statement which may be a little bit gratuitous, which was to reemphasize what the Senator from Alabama has said, that I only wish that in addition to giving the views of the United States Chamber of Commerce as to what was wrong in S. 249, that you might also have given your own views on what was wrong in the Taft-Hartley law. That is all I was going to say.

Senator HILL. In that connection I have just one point——

Mr. STEINKRAUS. You have been very nice in your treatment of me and I appreciate it, Senator.

Senator HILL. Mr. Steinkraus, what you said about the closed shop and the union-maintenance shop, I have got to make the deduction from what you said that you approach those matters with quite a degree of reasonableness.

Mr. STEINKRAUS. I think it is essential that you do.

Senator HILL. I find this in your prepared statement :

We feel that the individuals should be left free to join or not to join a labor organization.

That would be directly contrary to either a closed shop or a union maintenance shop, would it not?

Mr. STEINKRAUS. I should not think so. I should think that the individual freedom of joining or not joining would only be handicapped by an out-and-out closed shop and not by a union shop.

Senator HILL. You had a union-maintenance shop even under the Taft-Hartley law; where a majority of all the workers had voted for



a union-maintenance shop, the individual would have to be a member of the union, would he not?

Mr. STEINKRAUS. I am afraid so; yes. That is right, and I do not like the answer I have heard a couple of times, even the answer Secretary of Labor Tobin gave. It does not quite ring right. He says, "Well, if they do not want to join the union, let them get a job somewhere else."

Now that does not quite make sense to me. It does not quite seem right to say, "Well, here is one place you cannot work even if you want to work there unless you do the way we say."

That is kind of hard for me to get.

Senator HILL. Then you permit either a closed shop or a union-maintenance shop?

Mr. STEINKRAUS. I think that the union shop—if you allow a young fellow to choose any trade he wants to, and if he goes into the kind of trade where the union responsibility is such that they have got to have the authority, then I think he ought to go in with open eyes, and realize he is going to have to join that union. That is a different situation.

Senator HILL. You would not outlaw that type of union?

Mr. STEINKRAUS. No, sir.

Senator HILL. You would not fully subscribe to what the chamber of commerce said in its prepared statement, would you?

Mr. STEINKRAUS. I think it is all a question of interpretation of that statement. You interpret it a little differently than I do.

Senator HILL. I do not think it is subject to any other interpretation. I think you agreed on that.

Mr. STEINKRAUS. I think if you tried to take this statement sentence by sentence and asked me whether I would agree with every sentence, I would say no to you. I am the agent to present his statement here, and I think that we improved the statement a lot over when it was first written.

Senator HILL. I am sorry that instead of coming down as the agent, the principal is not here to answer questions, that you did not just come down here in your own right, in your own name and talk this thing over with this committee.

Mr. STEINKRAUS. That is kind of you to say that, but I want to say this: That I have had a lot of experience with organizations and I think the chamber of commerce in the United States approaches these things about as open-mindedly as any organization I know.

Wherever you have got large groups you have got differences of opinion, which is even true of the Senate with 96 Members.

Senator HILL. I am talking to Mr. Steinkraus now as the president of the brass company and the chamber of commerce.

You spoke of having a union in the Bridgeport Brass Co., Bridgeport, Conn. Your company is unionized?

Mr. STEINKRAUS. Yes, sir.

Senator HILL. You have a union-maintenance shop there, do you?

Mr. STEINKRAUS. Yes, sir, and a check-off.

Senator HILL. Did you find that it has been satisfactory?

Mr. STEINKRAUS. Very satisfactory. We have resisted the union shop because of these old people we have got. We do not see how we can force them in, and the union has not suffered. We believe in

a good strong union. We have done everything we could to help make them strong.

Senator HILL. Make them strong?

Mr. STEINKRAUS. Yes, sir. I have gone on public record in our town and in our papers and before our people. We do not want a weak union. We want a strong union. With a strong union you can get somewhere. With a weak union you are in trouble all the time.

Senator HILL. And your strong union, what we call a maintenance union, has worked out satisfactorily?

Mr. STEINKRAUS. Yes, sir. What I mean by a strong union is this: If management puts no stumbling blocks in their way to grow strong, but the management by no means takes a paternalistic attitude. The union has got to have a chance to develop its own strength without interference, and if it does, frankly I think there are a growing number of shops throughout this country that recognize that that makes for a happy relationship. That does not mean that you can jam it down their throats by legislation.

Senator DOUGLAS. Senator, could I ask one more question?

Senator HILL. Yes.

Senator DOUGLAS. It seems to me there are dangerous features in the Taft-Hartley law and that there are clauses which decent firms like your own will not take advantage of, but we cannot be certain about the other firms that are not decent.

Mr. STEINKRAUS. Senator, I would like to make a statement.

Senator DOUGLAS. They could drive a team of horses through these clauses.

Mr. STEINKRAUS. I would like to make a statement here. You could tell me I am all wrong, but this business of harping about how bad industry is and how there are only a few good ones is a very serious thing. Our industries and our labor are the last real bulwark for democracy, and if we have to get called upon again, we had better be strong.

Senator DOUGLAS. That is right.

Mr. STEINKRAUS. Now if too many people, especially in high places, keep on saying what a lousy bunch that bunch of manufacturers are, believe me the people are going to get to believe it. We have got to be very careful that we do not give that idea abroad. We have got to learn how to bring this labor group and management group together.

That is our responsibility and it is an extremely serious one, and believe me, this committee fighting about details is not going to do it. We are in a world that is in tremendous danger, and unless we stay strong here and can produce the stuff, the rest does not amount to anything. I was in the First World War as a buck private, and I was in France and Germany for over a year and a half, and I want to tell you lots of times we did not have any ammunition.

In this war I was in a brass company and I said believe me, if there is anything we can do to make one more round of ammunition, we are going to make it for those boys. We worked 24 hours a day, 7 days a week, all the way through, and our record is on evidence here in this headquarters, and our people worked like Trojans.

Sure we spent some money like you mentioned this morning. We gave them a picnic and we hired a 75-piece band when they got the third Army and Navy E. We wanted to show them appreciation

for what they were doing day and night and working like sixty to get that stuff out.

Now if we get too much of this negative idea around here, that industry stinks, I want to tell you it is going to set them back in a way that if we are in trouble—you cannot discourage management so badly. They are human beings too, do not forget, and they have got an awful lot of things to think about.

I want just to say a sympathetic word for the men that are at the head of businesses in this country. They work as hard as anybody, I think as hard as Senators do. [Laughter.]

Senator HILL. What you are telling us is that they work pretty hard, are you not, Mr. Steinkraus?

Mr. STEINKRAUS. Yes, sir.

Senator HILL. Mr. Steinkraus, you spoke about that band working hard as sixty, or something hard as sixty. I hope that band played Dixie, did it?

Mr. STEINKRAUS. Yes, sir. It played Dixie on a national hook-up.

Senator HILL. Good, fine.

Senator DOUGLAS. For the sake of the record I would like to say that my remarks were certainly not addressed to the employer group as a whole, and I think the record will show that I was very careful to pay tribute to you, sir.

Mr. STEINKRAUS. I was not referring to anything you said, Senator. I was really referring to what I see in the papers, what I read about otherwise, and the attacks that are made. I certainly do not refer to anything you gentlemen said today.

Senator HILL. You mean anything that has been said since you have been on the stand.

Mr. STEINKRAUS. I think you are fine. I tell you there is an answer to all these problems and it is a balanced answer. It is not either out here or out there. It is somewhere in here, and you gentlemen can find it. It is there to be found.

I would like to see you have a string of these industrial relations fellows and these fellows that are bargaining across the table and have you say to them, "Now just what do you find troublesome with this?"

You have got the wrong kind of people coming in here in the main in your hearing. You take 50 fellows of the kind Cy Ching used to be when he was with U. S. Rubber, you take fellows like Bill Winans of Union Carbide and Carbons, John Stephens of U. S. Steel and some of these presidents of smaller companies that do their own bargaining, ask them and then take some of these fellows in Bridgeport, Cleveland, that are doing their part, the district fellows of the A. F. of L. and the CIO, bring them down here, and ask those boys what are the things that are really causing trouble. You will get a little bit different story than you are getting now because they are right down to earth across the table. They know what is wrong with this law and what is right with it.

Senator HILL. Mr. Steinkraus, you have just made a strong statement in behalf of the statement I made, which was that I am sorry that you just did not come down here as the president of your company to sit around this table with us, instead of coming down with a prepared statement of the United States Chamber of Commerce.



Mr. STEINKRAUS. Well, I accept that as a very nice statement, but I want to say, Senator, that I have no embarrassment in ever presenting a statement for the United States Chamber of Commerce whether I am personally in full agreement with it or not, because of the very conscientious method by which they approach these things and present these recommendations.

I think that we have chamber people here before about six committees right today in Washington. They are a little rushed about getting these things all out too, because there are House hearings on finance, our chief economist is in there. We have a very fine committee on economic studies and research. We are really trying to be helpful.

Senator MURRAY. Are there any other questions?

Senator Taft.

Senator TAFT. I yield to Senator Donnell.

Senator DONNELL. Let the record show that Senator Taft is now present and through his courtesy I will question for a time, but leave ample time for the Senator's questioning.

The suggestion was made by Senator Hill a moment ago, Mr. Steinkraus, that he was sorry that you are not down here in your private capacity rather than representing the Chamber of Commerce of the United States, and a few moments ago he used some language to the effect that in the latter capacity you are here and the principal is not here.

Now I would like to submit in the first place before interrogating you that the principal is here. You are here as the Chamber of Commerce and I have not heard of anything which would indicate that there is any serious disagreement with you as to the major part of this 28-page statement.

Mr. STEINKRAUS. Senator, perhaps my words were not clear enough.

Senator DONNELL. Your words were very clear.

Mr. STEINKRAUS. Certainly I am in no position here of embarrassment about the Chamber of Commerce statement.

Senator DONNELL. I am sure you are not. You have no reason to be.

Mr. STEINKRAUS. I think it is a good statement. I think it probably can be improved as can any statement.

Senator DONNELL. And the Taft-Hartley bill can be improved. You have no question of that, and the Wagner Act probably could be improved.

Mr. STEINKRAUS. I think it has been a step forward, a big step forward.

Senator DONNELL. Yes. Now, Mr. Steinkraus, I understand therefore that although you have some individual views that may not be in accord and are not in accord with some particular specific things in this 28-page statement that you have presented, that this statement represents the consensus of opinion of the official committee on labor relations of the Chamber of Commerce of the United States.

Mr. STEINKRAUS. Yes, sir; approved by the board of directors.

Senator DONNELL. And approved by the board of directors of the Chamber of Commerce.

Mr. STEINKRAUS. And in accord with these printed policies which you find in our policy book.

Senator DONNELL. In that connection, Mr. Chairman, Mr. Steinkraus very kindly gave to the committee a little while ago this policy

declaration. I am not going to offer all of this for the record, but I would like to have permission to have this filed as one of the files of the committee, if he will permit us, and also to ask that that portion of it which runs from pages 32 to 41 be incorporated in full. That relates to the subject of industrial relations.

Senator MURRAY. It may be so incorporated. Will you give us the date?

Senator DONNELL. August 1948. Is that the latest expression?

Mr. STEINKRAUS. That is the latest expression of policy. It involves all that was taken at our annual meetings.

Senator MURRAY. That is the policy of the Chamber of Commerce as of 1948?

Mr. STEINKRAUS. Yes, sir; and it includes policies on any other broad subjects on Government issues.

(The text of pages referred to was submitted as follows:)

#### INDUSTRIAL RELATIONS

(Adopted 1947)

Industrial peace is essential to a united Nation and to the preservation of our free-enterprise system. Industrial peace between employer and employees will be achieved only when there is mutual respect and genuine acceptance of their respective rights and duties.

It is a self-evident fundamental fact that labor and management can take out of production in the form of wages, salaries, and other incomes only an amount that is commensurate with the effort they jointly put into production. The welfare of each is dependent upon the other. Labor, management, and the consuming public gain only as the efficiency of production is increased and the resultant cost to the consumer is decreased.

#### BASIC PRINCIPLES

To the preservation of our free-enterprise system and to the attainment of full and efficient production upon which equitable incomes depend, we subscribe to the following principles:

1. We hold that the right of the public to have uninterrupted production of goods and services must receive paramount consideration in disputes between labor and management.

2. The public interest requires that strikes should never be permitted against government: Federal, State, or local.

Similarly, the right to strike should never be permitted against any service affecting the safety, health, and welfare of the people until due precautions have been taken to safeguard the services upon which the community and the Nation are dependent.

3. We maintain that sympathy strikes, strikes in violation of contract, and strikes in furtherance of a jurisdictional dispute should be prohibited by law.

Similarly, strikes to compel recognition in disregard of another union's certified rights as bargaining agent or during pendency of a recognition question before a Government agency should be prohibited by law.

4. We subscribe to the right of employees to organize and bargain collectively whenever such action is the result of their own free and uncoerced choice.

5. We believe that individuals should be free to join or not to join labor organizations. The right to work should not be dependent upon union membership.

6. We are opposed to violence, intimidation, and coercive methods on the part of labor or management. The public interest demands the outlawing of mass picketing and coercion in connection with labor disputes.

7. Monopolistic practices when engaged in by management have long been subjected to legal controls. Monopolistic practices by labor organizations should likewise be subjected to legal controls.

8. The rights and responsibilities of management to direct an enterprise and its employees, consistent with the terms of labor agreements in effect, and to encourage wholesome cooperative relations with employees must not be curtailed by restrictions imposed on speech, conduct, or any legitimate managerial activities.

Supervisory employees are members of management and should be so recognized by law. They should not belong to or be affiliated with unions of other employees.

9. Employers, employees, and labor organizations should be held accountable under the law for their injurious conduct, whether breach of contract, damage to property, or other wrongs.

10. We maintain that all labor legislation should provide equality before the law and be clear and specific in its provisions. It should impose that minimum of control that will encourage voluntary rather than Government-imposed settlement of labor disputes.

Maximum freedom should be reserved to the States to establish and maintain such body of labor-relations law as each State in its legislative discretion may consider essential.

We believe that the equitable revision and impartial administration of labor laws, combined with a spirit of mutual understanding and fair play, will correct many of the present difficulties in the field of labor relations.

#### THE EXPANDED DECLARATIONS

In amplification of the basic principles, we offer the following:

##### *The public interest*

In disputes between management and labor the right of the public to have uninterrupted production of goods and services must receive paramount consideration.

Private enterprise in America is founded on the continuous provision of goods and services to the public. Disputes between labor and management or disputes between labor unions which deprive the public of goods and services must be avoided. Labor disputes should be conducted with proper regard for the public interest.

##### *Strikes against Government and against services affecting safety, health, and welfare*

The public interest requires that strikes should never be permitted against government: Federal, State, or local.

Similarly, the right to strike should never be permitted against any service affecting the safety, health, and welfare of the people until due precautions have been taken to safeguard the services upon which the community and the Nation are dependent.

##### *Industrial strikes*

The right of an individual to work or to quit work is inviolate. But the right to strike, that is to quit work in concert with others, is not an absolute right. It is qualified by the facts and circumstances in each situation.

Sympathy strikes, strikes in violation of contract, and strikes in furtherance of a dispute regarding which labor organizations members are to perform certain work should be prohibited by law.

Similarly, strikes to compel recognition in disregard of another union's certified rights as bargaining agent or during the pendency of a recognition question before a Government agency should be prohibited by law.

##### *Voluntary procedures and collective bargaining*

In the conduct of employer-employee relations, industrial peace can best be achieved by placing principal reliance on voluntary procedures to which the parties have jointly subscribed. Accordingly, employer and employees should work together on those things of common concern which fairly conserve their respective interests.

Government-imposed regulations and decisions do not promote industrial peace and understanding as effectively as agreements freely arrived at by the parties on their own responsibility by the conference method.

*Collective bargaining.*—We subscribe to the right of employees to organize and bargain collectively whenever such action is the result of their own free and uncoerced choice.

Collective bargaining on wages, hours, and working conditions should be a process by which an employer and the freely chosen representatives of workers negotiate in the interest of effecting a transaction mutually advantageous to the employer, to employees, and to the public served by the enterprise of which they are a part. Thus, collective bargaining should be carried on with conscientious



endeavor to understand each other's problems and in the interest of stabilizing employment relations.

*Use of conciliation.*—Disputes arising before a collective-bargaining agreement is entered into, or when such an agreement is not in effect, should be settled by orderly and peaceful procedures. If after a reasonable time and after full effort has been made by direct negotiation, a dispute is not so resolved, conciliation should be employed by the parties. Such conciliation may be by private or public agency, local, State, or Federal, as best suited to the circumstances.

A conciliation service established by law should be an independent agency headed by a competent administrator. Its staff should be composed of individuals of mature experience who are familiar with human and industrial relations and who are imbued with the public interest.

The efforts of the agency should be directed only toward requiring voluntary agreement. Arbitration, fact-finding, and issuance of public recommendations should be no part of its functions.

*Use of arbitration.*—Should direct negotiations and conciliation prove unsuccessful, then under certain circumstances, arbitration, voluntarily agreed upon may be utilized. When voluntary arbitration is resorted to, the parties should agree upon the precise issues, the terms of submission and the principles by which the arbitration shall be governed.

Collective-bargaining agreements should contain mutually acceptable provisions that grievances and disputes involving the meaning or interpretation of the terms of the agreement are to be settled without resort to strikes, lock-outs, or other interruptions to normal operations, by an effective grievance procedure including arbitration mutually agreed upon as its final step.

Arbitration should be used only as an adjunct to free collective bargaining and should not be required by law.

#### *Strike votes*

Whenever collective bargaining negotiations break down after both sides to a union agreement have submitted final proposals to each other and such proposals have been thoroughly and factually presented to the employees, the public interest will best be served by deferring strikes or lock-outs until a majority of all employees within the unit have approved by secret ballot.

Such vote should preferably be taken on the company property for the convenience of the employees and should be supervised by a Federal, State, or local impartial agency.

Results of such vote should not be disclosed before all employees within the unit involved have had the opportunity to vote within a 24-hour period.

#### *Compulsory unionism*

Compulsory unionism interferes with the free and uncoerced choice of employees with respect to self-organization and collective bargaining. Employees should be free to join or not to join a labor organization. Their right to work should never be dependent upon union membership.

The right to work is jeopardized by compulsory unionism. A labor union should recruit and hold its members on its merits and not by making membership in any organization a condition of employment.

A worker and his family must be protected from threats, violence, and any other interference with the exercise of this right.

Federal and State governments should take immediate and effective action to assure the individual the right to work without interference.

#### *Physical force, threats, violence, mass picketing*

The use of physical force, threats, violence, and mass picketing in the course of labor disputes interferes with employee freedom of choice, and should not be permitted.

#### *Monopolistic practices*

Monopolistic practices, when engaged in by management, have long been subjected to legal controls. It is in the public interest to impose similar legal controls on such practices by labor organizations.

Among these practices of labor unions which should be banned by Federal and State law are:

*Misuse of economic power.*—Monopolistic practices by labor unions which are brought about by the imposition of industry-wide bargaining or by bargaining by one union with large groups of employers whether or not constituting a single industry.

*Royalty payments.*—Involuntary payments, enforced under threat of strikes, to provide special benefits for limited groups and which increase the cost of goods and services to the general public.

*Tolls on movement of goods.*—Interference by force, coercion, or intimidation with the movement of goods or provision of services.

*Interference with use or installation of materials.*—Refusal to handle, work on, or install products solely because they were made or handled in the first instance by unorganized workers or by members of another labor organization.

*Secondary boycotts.*—Secondary boycotts practiced against employers with respect to whom no grievances exist.

*Unnecessary employees.*—The use of economic power to require an employer to carry on the pay roll more workers than are needed, and similar practices which result in unnecessary increases in costs and prices.

In addition to any other appropriate legislation, provisions of the antitrust laws should be made applicable to labor unions to the extent necessary to effect a ban on monopolistic practices.<sup>1</sup>

#### *Management responsibilities*

The rights and responsibilities of management to direct an enterprise and its employees, consistent with the terms of labor agreements in effect, and to encourage wholesome cooperative relations with employees must not be curtailed by restrictions imposed on speech, conduct, or any legitimate managerial activities.

Supervisory employees are members of management and should be so recognized by law. They should not belong to or be affiliated with unions of other employees.

#### *Joint responsibilities*

Employers, employees, and labor organizations should be held accountable under the law for their injurious conduct, whether breach of contract, damage to persons or property, or other wrongs.

Both management and labor organizations should take steps to insure that their representatives and members observe the letter and spirit of their agreements, and to prevent conduct by their representatives and members that will result in damage to persons or property, or in other wrongs.

The law should award damages for such acts.

#### *Labor law*

Labor legislation should provide equality before the law and be clear and specific in its provisions. It should impose that minimum of control that will encourage voluntary rather than Government-imposed settlement of labor disputes.

The fundamental purpose of law is the protection of society and the establishment of principles by which the conduct of society shall be regulated. To the extent management and labor can establish satisfactory relationships consistent with the public interest, the need for law is diminished.

The law should impose equality of obligations on both parties to the collective bargaining process and define the scope of subject matter on which they are required to bargain. The law should empower the courts to reverse administrative decisions upon labor matters when contrary to law and not supported by the weight of the evidence.

Equitable revision and impartial administration of labor laws combined with mutual understanding and fair play will correct much of the present difficulty in the field of labor relations.

Maximum freedom should be reserved for the States to establish and maintain such body of labor relations law as each State in its legislative discretion may consider essential. The success of several State labor relations laws in resolving labor disputes without work stoppages merits serious consideration by the other States.

The needs for continuing improvement of legislation and problems in the coordination of Federal and State laws should be the subject of intensive study by the Federal and State legislative bodies.

#### FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act fails to meet the fundamental requirement that laws should be clear and certain, so that all persons affected may be fully

<sup>1</sup> This paragraph adopted 1948.

advised of their rights and responsibilities. Constantly broadened administrative and judicial interpretations respecting the applications of this law have now reached the point where it is imposing upon great segments of business wholly unlooked-for threats of financial liability far beyond industry's ability to pay (1946).

It is vital to the public interest that this law be revised so as to remove its uncertainties and inequities and to make definite the areas of its applicability. To this end the Congress should undertake a thoroughgoing study of the entire law and its economic effects. Some changes of urgent importance, for example, are the following: A definition of coverage to exclude operations not in or substantially affecting interstate commerce; a definition of compensable working time to permit recognition of custom, practice, or agreement designed to eliminate uncertainties with regard to the status of nonproductive time; a provision permitting the exercise of judicial discretion in the assessment of damages where an unwitting violation or other mitigating circumstances are found; and cognizance of the right of employers and employees to make compromise settlements in cases of bona fide disputes arising under the act (1946).

In order to encourage employers to adopt plans for greater continuity of wage payments and steadier jobs, the special incentives provided under existing law through the exemption from the payment for time-and-a-half wages should be made more flexible and extended to all workers regardless of membership in any association or organization (1948).

Senator DONNELL. Mr. Steinkraus, you referred to the committee on labor relations. Was that the committee by which the statement, the 28-page mimeographed statement of yours was prepared?

Mr. STEINKRAUS. Yes, sir.

Senator DONNELL. In collaboration and consultation one with the other?

Mr. STEINKRAUS. With the staff.

Senator DONNELL. Did the committee come together or did you send this around?

Mr. STEINKRAUS. We spent two solid days.

Senator DONNELL. Here in Washington?

Mr. STEINKRAUS. In Washington, followed by a presentation the next day at the board.

Senator DONNELL. Yes, sir. Mr. Steinkraus, when was this meeting in Washington, the 2-day meeting of the committee on labor relations?

Mr. STEINKRAUS. In January. I cannot say exactly.

Senator DONNELL. In January of this year?

Mr. STEINKRAUS. Yes.

Senator DONNELL. I am not going to burden the record with a long discussion of these men, but you gave us a list of the men on labor relations. I notice they include members, for instance the chairman of it is Mr. Richard K. Lane, of Tulsa, Okla.

Mr. STEINKRAUS. It is a select committee. They have got a lot of talent.

Senator DONNELL. Then the next gentleman is the president of the National Cash Register Co. of Dayton, Ohio.

The next one is the vice president of General Motors Corp.

Mr. STEINKRAUS. Industrial relations men. All of these men are either the heads of their companies and handle their industrial relations, or they are the executives in charge.

Senator DONNELL. And Garret L. Bergen, personnel manager of Marshall Field & Co., and Mr. Boulware, who was here yesterday, of the General Electric Co., Mr. Russell Burbank. What is his position?



Mr. STEINKRAUS. He is the manufacturer of chocolates. He is the head of his own company in Brooklyn. He handles his own labor relations.

Senator DONNELL. That company has no monopoly on anything, has it?

Mr. STEINKRAUS. Oh, no. He is a small manufacturer.

Senator DONNELL. About how large a company are they, do you happen to know?

Mr. STEINKRAUS. It is not a really big one.

Senator DONNELL. Here is one that is a big one, Fred W. Climer of Goodyear Tire & Rubber Co., B. D. Davidson of the Davidson Transfer & Storage Co. Does that have a monopoly over the United States?

Mr. STEINKRAUS. That is a small outfit.

Senator DONNELL. Here is Mr. Richard P. Doherty who is the director of the employer-employee relations division of the National Association of Broadcasters.

Mr. STEINKRAUS. May I say this is the Doherty who had so much to do with forming that labor-management association in Boston where they helped develop a wonderfully strong cooperative situation.

Senator DONNELL. The next gentleman is the vice-president of the A. E. Staley Manufacturing Co. in Decatur, Mr. Franzy Eakin. Is that a monopolistic concern all over the country?

Mr. STEINKRAUS. No, sir.

Senator DONNELL. What is it?

Mr. STEINKRAUS. A starch company.

Senator DONNELL. The next one is Mr. H. S. Hardin, of New Orleans, who is president of the Hardin Bag & Burlap Co. Is that a Nation-wide company?

Mr. STEINKRAUS. No.

Senator DONNELL. It is a small company?

Mr. STEINKRAUS. Relatively small.

Senator DONNELL. The next one is Carl B. Jansen, of Pittsburgh, president of the Dravo Corp. What is that company?

Mr. STEINKRAUS. Contractors.

Senator DONNELL. Is that a very large concern, Nation-wide?

Mr. STEINKRAUS. They are not of the same size, I do not believe, as some of the very largest.

Senator DONNELL. Of course I do not mean any reflection, and I know you do not, when you refer to them as medium-sized. The point I am making is, this is not composed just exclusively of people like the head of the General Electric Co.?

Mr. STEINKRAUS. They are a very representative group. There is a wide range of lines such as trucking, manufacturing, public utilities. There is a very carefully selected cross section.

Senator DONNELL. The next is the director of industrial relations of the Curtiss-Wright Corp., Mr. Howard S. Kaltenborn. Then there is Robert P. Koenig, of Indianapolis, the president of the Ayrshire Collieries Corp. That is not a Nation-wide company, is it?

Mr. STEINKRAUS. I have not known it as such.

Senator DONNELL. Next Mr. Lippman, of Toledo, president of the Textile Leather Corp.

Mr. STEINKRAUS. He is there because he had so much to do with getting that Toledo plan worked out—

Senator DONNELL. Not an especially large company, is it?

Mr. STEINKRAUS. No, sir.

Senator DONNELL. Then, Mr. Dean H. Mitchell, of Hammond, Ind., president of the Northern Indiana Public Service Co., Mr. Nash, of Oklahoma, president of the Yellow Transit Co. Is that a cab company in Oklahoma City?

Mr. STEINKRAUS. Yes, sir.

Senator DONNELL. Mr. H. M. Ramel, of St. Louis, vice president of the Ramsey Corp. Do you know what they do? Do you know what their business is?

Mr. STEINKRAUS. I do not happen to know.

Senator DONNELL. Mr. Howard Young is going to testify. Perhaps he can answer that.

Mr. YOUNG. It is a small company, general manufacturing.

Senator DONNELL. Thank you, sir.

Next is Mr. Thomas D. Reed of Baltimore, vice president of McCormick & Company in Baltimore. Is that a large company?

Mr. STEINKRAUS. That is a company that has a very wonderful plant and has excellent labor relations.

Senator DONNELL. One of the very largest companies in the United States or not?

Mr. STEINKRAUS. No, sir; they are in the seed and spice business.

Senator DONNELL. Now, Mr. Roth testified the other day. He is the president of the San Francisco Employers Council. The next one is Mr. Otto A. Seyferth of Muskegon, Mich., president of West Michigan Steel & Foundry Co. The next man is Charles E. Shaw of New York, manager, employee relations overseas, Standard Oil Co. of New Jersey. That, of course, is a large company, very large.

Thomas G. Spates of New York, vice president, personnel administration, General Foods Corp. That is a very large corporation.

Mr. Hoyt P. Steele, vice president, Benjamin Electric Manufacturing Co., Des Plaines, Ill. Is that a large company?

Mr. STEINKRAUS. Representative company, middle.

Senator DONNELL. Middle?

Mr. STEINKRAUS. Not in a class with Westinghouse or General Electric.

Senator DONNELL. Mr. Stephens of Pittsburgh, vice president, United States Steel Corp. Of course, that is a very large company; we all realize.

Mr. W. H. Winans, industrial-relations manager of the Union Carbide & Carbon Co. That is a very large company, I take it.

Next, Mr. William B. Barton, who is the secretary of this Committee on Labor Relations of the Chamber of Commerce. Is he not the man that was formerly trial examiner of the National Labor Relations Board?

Mr. STEINKRAUS. Yes, sir.

Senator DONNELL. He has been very active and very helpful to your committee?

Mr. STEINKRAUS. He is here now.

Senator DONNELL. Stand and let us see you. He is certainly not one of these great monopolistic men, from the size of him, but we are glad to have him here.

You referred to the board of directors. I do not want to go down that list. Will you be kind enough to file with us a complete list of

the board of directors of the United States Chamber of Commerce, stating, if you please, who they are, as to the companies they are with and just a little indication of something of the size or nature of the companies. Will you do that?

Mr. STEINKRAUS. I will be very glad to.

(Mr. Steinkraus submitted the following roster.)

OFFICERS AND DIRECTORS OF THE CHAMBER OF COMMERCE OF THE UNITED STATES,  
1948-49

President: Earl O. Shreve, Chamber of Commerce, U. S. A., 1615 H Street NW., Washington 6, D. C.; formerly associated with General Electric Co.

Vice presidents:

Herman W. Steinkraus, president and chairman of the board, Bridgeport Brass Co., 30 Grand Street, Bridgeport, Conn.; brass manufacturer.

Carlyle Fraser, chairman of board, Genuine Parts Co., 475 West Peachtree Street, Atlanta, Ga.; automotive parts wholesaler.

Roy C. Ingersoll, president, Ingersoll Steel Division, Borg-Warner Corp., 310 South Michigan Avenue, Chicago 4, Ill.; steel equipment manufacturer.

Christopher J. Abbott, Hyannis, Nebr.; livestock producer and banker.

Powell C. Groner, president, Kansas City Public Service Co., 728 Delaware Street, Kansas City 13, Mo.; city transportation, public utility.

W. S. Rosecrans, president, W. S. Rosecrans, Inc., 1151 South Broadway, Los Angeles 15, Calif.; property management.

Senior council:

Harper Sibley, 100 Hiram Sibley Building, Rochester, N. Y.; grain, livestock, and dairy farmer.

George H. Davis, president, Davis-Noland-Merrill Grain Co., 1240 Board of Trade Building, Kansas City, Mo.; farmer and grain dealer.

James S. Kemper, chairman, Lumbermens Mutual Casualty Co. of Chicago, Mutual Insurance Building, Chicago 40, Ill.; casualty insurance.

Hon. Albert W. Hawkes, 195 Belgrave Drive, Kearney, N. J.; congoleum manufacturer.

Eric Johnston, president, Motion Picture Association of America, 1600 I Street NW., Washington 6, D. C.

Treasurer: Ellsworth C. Alvord, Alvord & Alvord, Ring Building, 1200 Eighteenth Street NW., Washington 6, D. C.; income-tax expert.

Executive vice president: Ralph Bradford, Chamber of Commerce, U. S. A., 1615 H. Street NW., Washington 6, D. C.

Manager: Arch N. Booth, Chamber of Commerce, U. S. A., 1615 H Street NW., Washington 6, D. C.

Directors:

Stanley C. Allyn, president, National Cash Register Co., Main and K Streets, Dayton 9, Ohio; cash register manufacturer.

James W. Baker, president and treasurer, Baker-Lawhon & Ford, Inc., 1124 Commerce Street (P. O. Box 143) Shreveport, La.; wholesale groceries.

Melvin H. Baker, president, National Gypsum Co., 325 Delaware Avenue, Buffalo 2, N. Y.; building materials.

L. Ward Bannister, 801 Equitable Building, Denver 2, Colo.; lawyer.

Raymond H. Berry, Berry, Stevens, Barbier & Evelyn, 1000 Penobscot Building, Detroit 26, Mich.; lawyer.

Richard L. Bowditch, president, C. H. Sprague & Son Co., 10 Post Office Square, Boston 9, Mass.; coal distribution and shipping.

Louis Bromfield, Malabar Farm, Lucas, Ohio; farmer and author.

Warren C. Bulette, Manufacturers' Association Building, York, Pa.; trailer manufacturer.

Harry A. Bullis, chairman of the board, General Mills, Inc., 400 Second Avenue, South, Minneapolis 1, Minn.; food manufacturer and distributor.

Ralph L. Carr, attorney, Symes Building, Denver 2, Colo.

Frederick P. Champ, president, Cache Valley Banking Co., P. O. Box 436, Logan, Utah; mortgage banker.

Dunlap C. Clark, president, Central Bank of Oakland, Oakland, Calif.

Fred L. Conklin, president, Provident Life Insurance Co., Main and Broadway, Bismarck, N. Dak.

J. B. Converse, president, J. B. Converse & Co., 106 Joseph Street, Mobile, Ala.; civil engineer.



## Directors—Continued

- Col. Joseph W. Evans, Evans & Co., Cotton Exchange Building, Houston 12, Tex.; cotton exporter.
- James D. Francis, president, Island Creek Coal Co., P. O. Box 2187, Huntington, W. Va.; coal producer.
- Fred G. Gurley, president, Atchison, Topeka & Santa Fe Railway, 80 East Jackson Boulevard, Chicago 4, Ill.
- William A. Hanley, vice president, Eli Lilly & Co., 740 South Alabama Street (P. O. Box 618), Indianapolis, Ind.; pharmaceutical-supplies manufacturer.
- Russell C. Harrington, resident partner, Ernst & Ernst, 1702 Industrial Trust Building, Providence, R. I.; accountant.
- W. Homer Hartz, 179 Lake Shore Drive, Chicago 5, Ill.; railroad-crossings manufacturer.
- Wilson L. Hemingway, chairman of the board, Mercantile-Commerce Bank & Trust Co., 721 Locust Street, St. Louis, Mo.; banker.
- Dechar A. Hulcy, president, Lone Star Gas Co., 1915 Wood Street, Dallas, Tex.
- Carl N. Jacobs, president, Hardware Mutual Casualty Co., 200 Strongs Avenue, Stevens Point, Wis.; casualty insurance.
- Herbert F. Johnson, president, S. C. Johnson & Son, Inc., Racine, Wis.; floor wax and similar products manufacturer.
- Clem D. Johnston, president, Roanoke Public Warehouse, P. O. Box 975, Roanoke, Va.; warehouseman.
- W. A. Klinger, W. A. Klinger Co., Warnock Building, Sioux City, Iowa; building constructor.
- Richard K. Lane, president, Public Service Co. of Oklahoma, 600 South Main Street, Tulsa 2, Okla.; electric power, public utility.
- Laurence F. Lee, president, Peninsular Life Insurance Co., P. O. Box 1230, Jacksonville, Fla.
- Robert S. Mars, president, W. P. & R. S. Mars Co., 324 West Michigan Avenue, Duluth 2, Minn.; distributor of industrial machinery.
- Joseph F. Matthai, executive vice president, United States Fidelity & Guaranty Co., Baltimore 3, Md.; casualty insurance.
- Francis P. Matthews, chairman of board, Securities Acceptance Corp., 516 Insurance Building, Omaha, Nebr.; savings and loan associations.
- Dean H. Mitchell, president, Northern Indiana Public Service Co., 5265 Hohman Avenue, Hammond, Ind.; gas (public utility).
- Edgar Morris, president and treasurer, Edgar Morris Sales Co., 712 Thirteenth Street NW., Washington, D. C., gas and electrical appliances wholesaler.
- Evans A. Nash, president, Yellow Transit Co., 311 South Western Avenue, Oklahoma City 4, Okla.; trucks (transportation).
- Harlan I. Peyton, president, Peyton Investment Co., Peyton Building, Spokane, Wash.; investments.
- Ellis Howes Robison, vice president-treasurer, John L. Thompson Sons & Co., Inc., 159-167 River Street, Troy, N. Y.; drugs wholesaler.
- Otto A. Seyferth, president, West Michigan Steel Foundry Co., 1148 West Western Avenue, Muskegon St. Mich.; steel manufacturer.
- Harold F. Sheets, 899 East Valley Avenue, Montecito, Santa Barbara, Calif.; petroleum production and distribution.
- John Ben Shepperd, 511 Post Street, Gladewater, Tex.; lawyer.
- Raymond Skinner, directing partner, Forest Hill Dairy, 2040 Madison Avenue, Memphis, Tenn.; dairy-products distributor.
- William S. Street, president, Frederick & Nelson Co., Fifth and Pine Streets, Seattle 1, Wash.; department store.
- John F. Tinsley, president, Crompton & Knowles Loom Works, Worcester, Mass.; textile-machinery manufacturer.
- Leonard W. Trester, director of public policy, General Outdoor Advertising Co., 301 South Capitol Street, Washington 3, D. C.
- Grover W. West, president, First Federal Savings & Loan Association, 46 Pryor Street NE., Atlanta, Ga.
- Harry Woodhead, general manager, Western Pressed Metals Division, Douglas Aircraft Co., Inc., Santa Monica, Calif.; aircraft manufacturer.

Senator DONNELL. Now, this committee on policy which adopted these declarations of the Chamber of Commerce, in the first place

the committee adopted these declarations. Did the board of directors of the Chamber of Commerce affirm that adoption?

Mr. STEINKRAUS. Yes, sir. The committee on policy handles the things with referendum to our members throughout the country. Everything has to be done through the committee on policy.

Senator DONNELL. Its action is submitted to the people all over the United States, the membership, and the membership, not the board of directors, pass on what the committee on policy does?

Mr. STEINKRAUS. And in some cases at annual meetings.

Senator DONNELL. Here is Mr. Huley, chairman. He is the president of the Lone Star Gas Co. in Dallas.

Then, there is Mr. Allen Abrams, vice president, Marathon Corp., Rothschild, Wis. Is that a large company?

Mr. STEINKRAUS. I do not know.

Senator DONNELL. Now, Mr. Allen is up in your part of the country, Sage-Allen & Co., of Hartford, Conn.

Mr. STEINKRAUS. That is a department store.

Senator DONNELL. One of the large ones, I assume, in Hartford?

Mr. STEINKRAUS. Not the largest one of them.

Senator DONNELL. Mr. J. B. Converse, president of the J. B. Converse & Company, Inc., of Mobile, Ala. Is that a large concern?

Mr. STEINKRAUS. No, sir.

Senator DONNELL. Mr. Harris, president of the First and Merchants National Bank of Richmond, Va.

Walter S. Johnson, president, American Box Corp., San Francisco. Is that large?

Mr. STEINKRAUS. Very large.

Senator DONNELL. Mr. Matthai, executive vice president, United States Fidelity & Guaranty Co. of Baltimore. That is a large company?

Mr. STEINKRAUS. That is insurance. As I said before, we have nine major departments in the chamber, and we have leading people in one of those fields.

Senator DONNELL. Mr. Proctor, vice president, Vermont Marble Co., Proctor, Vt. That is a large concern, is it not—or medium?

Mr. STEINKRAUS. Not very large.

Senator DONNELL. Emmett Salisbury of the Salisbury Co., Minneapolis. What size is that?

Mr. STEINKRAUS. I do not know.

Senator DONNELL. Here is a friend of mine. I can testify about him. If you want to, that is fine. H. E. Slusher, president, Missouri Farm Bureau Federation, 208-210 East Capitol Avenue, Jefferson City, Mo. That is the local Missouri branch of the Farm Bureau Federation. Do you know Mr. Slusher?

Mr. STEINKRAUS. Yes, sir.

Senator DONNELL. You would not claim he is a monopolist?

Mr. STEINKRAUS. A very fine gentleman.

Senator DONNELL. He is a constituent of mine.

Next is Dr. Franklyn B. Snyder, president, Northwestern University, Evanston, Ill.

Mr. Charles E. Swartzbaugh, president, Swartzbaugh Manufacturing Co., Toledo. Do you know what that is?

Mr. STEINKRAUS. Yes, sir.

Senator DONNELL. Large or medium?

Mr. STEINKRAUS. Medium.

Senator DONNELL. Mr. A. W. Vogtle, vice president, DeBardeleben Coal Corp., Birmingham, Ala. Is that a large concern?

Mr. STEINKRAUS. Not very.

Senator DONNELL. Mr. W. J. Wehrli, of Casper, Wyo., whose occupation is not given here, Wyoming National Bank Building, Casper, Wyo.

Mr. George E. Whitwell, vice president, Philadelphia Electric Co., in Philadelphia. I suppose that is a large public utility.

Mr. George W. Wolf, president, U. S. Steel Export Co., of New York. That is a large company. The name sounds like it. Mr. Henry P. Fowler, secretary, general counsel, Chamber of Commerce of the United States; and, finally, Mr. Milton A. Smith, assistant general counsel, Chamber of Commerce of the United States.

Now, that is the committee on policy whose recommendations are adopted by the membership and everybody, adopted as incorporated in this book by the membership of the Chamber of Commerce throughout the country. Do you happen to know Mr. Howard Young who sits over there?

Mr. STEINKRAUS. Yes, sir.

Senator DONNELL. He is the chairman of the Board of the St. Louis Chamber of Commerce. Are they not one of the constituent members of the United States Chamber of Commerce?

Has Mr. Young had any connection with the United States Chamber of Commerce?

Mr. STEINKRAUS. I believe so. Have you not, Mr. Young?

Mr. YOUNG. Only on some of the committees. I am on the defense committee at the present time.

Senator DONNELL. Now, the St. Louis Chamber of Commerce is representative of a great number of industries. How many members do you have, Colonel Young?

Mr. YOUNG. We have over 2,000.

Senator DONNELL. I would not say they are all monopolies, would you, Colonel?

Mr. YOUNG. Most of them are small companies.

Senator DONNELL. Now take out in my old home town, Maryville, Mo. You have not heard of that town, I suspect—7,000, 8,000, maybe 10,000. I expect the chamber of commerce there is a member of it. Do you happen to know?

Mr. STEINKRAUS. I do not know.

Senator DONNELL. Chambers of commerce in little towns, big towns, small towns, all kinds of towns are in the National Chamber of Commerce; is that right? And if you observed, to quote the acting chairman a little while ago, that in these various towns one of these great big corporations, enormous ones, acts as a controlling influence over all of these little fellows—did you see anything like that?

Mr. STEINKRAUS. I never saw anything like that.

Senator DONNELL. I think you would have a revolution out in St. Louis if they would try that.

Mr. STEINKRAUS. As a matter of fact, the independent fellow at the head of his own business is perhaps the most independent thinker that you get. They really express their viewpoints.



Senator DONNELL. Now, just one or two further questions. Well, maybe I will not confine myself to two. I have just a few little questions here.

You referred here to the Conciliation Service. I think there is something of interest there to note. I expect maybe you have noted in the proposed bill—I do not know whether you have gone back into the statute, but, so far as I know, and I may be wrong, there was not any statutory provision for conciliation prior to the March 4, 1913, Act which created the Department of Labor. Now, if you will read section 8 of that bill, you will find a very interesting thing, I think. It is divided really into two parts, as would be indicated by the punctuation here.

One is:

The Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done;”—

There is nothing up to that point that says anything at all about what the power, duty and responsibility, supervision, and so forth, of the Secretary of Labor shall be over the mediators.

The next part of it, which is several lines here—and I will ask that it be incorporated in the record in full.

May it be incorporated, Mr. Chairman?

The CHAIRMAN. It may be.

Senator DONNELL. Very well, thank you.

(The remainder of sec. 8 of the Act of March 4, 1913, creating the Department of Labor is as follows: “; and all duties performed and all power or authority possessed or exercised by the head of any executive department in and over any bureau, office, board, branch, or division of the public service by this act transferred to the Department of Labor, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service whether of an appellate or revisory character or otherwise, shall hereafter be vested in and exercised by the head of the said Department of Labor.”)

Senator DONNELL. That portion of the section relates to duties performed and power and authority of the bureaus and offices and so forth, which are transferred to the Department of Labor. Obviously, as I understand it, it does not refer at all to the commissioners of conciliation.

I want to call your attention to this very interesting thing: It was called to my attention. I happened to think of it in connection with a conversation I had the other day.

Whereas, back in 1913 there is nothing at all said there about this power of policy and direction and so forth, and the Secretary of Labor, and so far as I know the Secretary of Labor did not exercise that power back years ago; but when you get into the Thomas bill that is before us here, what does it say?

It says:

The United States Conciliation Service shall be administered under the general direction and supervision of the Secretary of Labor, general policies and standards for the operation of the Service shall be formulated and promulgated by the Director of Conciliation with the approval of the Secretary of Labor.

You see the very striking difference between the two?

Mr. STEINKRAUS. Yes.

Senator DONNELL. Between the power and authority in this proposed bill.

Now, finally, Mr. Steinkraus, this testimony that you have given here has got a whole lot of interesting things. I have not had a chance to read very much of it, but I can see the general nature of it. May I ask in that connection—you referred to mass picketing—does your organization favor some kind of control, either local or national, whichever would be necessary to be effective, to prevent outrages by which management cannot even be allowed to go into its own plant without getting a permit from employees?

Mr. STEINKRAUS. We definitely do, and we so state.

Senator DONNELL. Good, good. Did you know Mr. Carey over at the Yale & Towne Manufacturing Co.

Mr. STEINKRAUS. I knew him very well.

Senator DONNELL. He was drowned in a very unfortunate accident. Mr. Carey testified here—if I am not in error—2 or 3 years ago, he told us of the fact that he couldn't get into the Yale & Towne Manufacturing Co. of which he was president. Do you know that to be a fact from your general knowledge?

Mr. STEINKRAUS. People, including his works manager, could not get out. They dropped food on the roof of the building by airplane to feed them.

Senator DONNELL. I want to go on record saying at least one member of this committee thinks that sort of thing is outrageous and ought to be prevented by something.

On the closed shop: What is your personal opinion on that? I want that to be perfectly clear, what your individual opinion is on the closed shop.

Mr. STEINKRAUS. Senator, my own personal opinion is that the closed shop is un-American. I do not think that anybody ought to be told that he cannot work in a certain industry unless he joins something.

Senator DONNELL. Or unless he is already in. That is what the closed shop is.

To distinguish between the closed shop and the union shop, you know that the closed shop is one where there is an agreement made that you cannot get a job unless you are already in. The union shop, you cannot get a job unless you are going to go in.

Mr. STEINKRAUS. A closed shop and a closed union are perhaps not exactly the same, but they amount to the same. It is closed to anybody coming into that industry.

Senator DONNELL. Take the closed shop, the one in which there is an agreement between the employer and the employee that nobody can come into that shop as an employee unless he is already in the union. Do you favor that?

Mr. STEINKRAUS. No, sir; I do not.

Senator DONNELL. Take the union shop where it is provided that a man cannot get in unless he agrees to join the union within a certain period of time. There is a difference there. I once did not think there was, but I think I can see that there is.

Mr. STEINKRAUS. There is a big difference.

Senator DONNELL. A big difference.

Senator PEPPER. Will the Senator yield?

Senator DONNELL. I yield.

Senator PEPPER. Mr. Steinkraus, the case that we have ordinarily considered here where the closed shop was involved, and what this committee, just like Mr. Green and others, has advocated is that the employer and the employee be free to enter an agreement that the employer will not hire a man who is not a member of the union to which the other employees belong. Now, you understand that. I think, Senator, that is a case we ordinarily discuss here, is it not.

Senator DONNELL. Senator, I did not get you.

Senator TAFT. The agreement not between the employer and the employee but between the employer and the representative elected by a majority of the employees with whom half of them may not agree at all.

Senator PEPPER. But our hypothesis is that the representatives of the employees have already been chosen by election, by at least a majority of those voting who have selected them or him as their representative.

What I am getting to is what we advocate, the so-called closed shop is predicated upon the agreement with the employer that he will not employ anybody not a member of the union of which the representing agent is composed.

Now, then, what I want to ask you is: Does not the employer have the right to make any condition other than union membership under the Wagner Act—does not the employer have a right to agree that he will not employ brown-eyed men or blue-eyed men, if he wants to, under the law?

In other words, is there anything new?

Has he not unlimited discretion to hire and fire with the one exception, that he cannot discriminate against the person?

Mr. STEINKRAUS. I wish the issue was as clear as it ought to be. It is a tremendously important issue, but I have not heard anyone give a real answer as to how to solve this particular problem.

Senator DONNELL. Would the Senator permit me, please, to continue at this point? I will be through in just a moment.

Senator PEPPER. Thank you, Senator.

Senator DONNELL. Thank you very much. I am afraid that I did not accurately state what a union shop is. I have before me now the section of the Taft-Hartley Act which uses this language. It refers to requiring as a condition of employment, "Membership in the labor organization on or after the 30th day following the beginning of the employment or the effective date of such agreement."

Now, may I just restate my question so that I get the record perfectly clear. I think you and I understand one another but I want the record perfectly clear because somebody is going to read this some day.

In the first place, the closed shop, as I understand it, is one in which it is agreed between the employer and the labor organization representing the employees that nobody can be engaged by that employer unless that person is already a member of a union.

Now: do you favor that?

Mr. STEINKRAUS. No, sir.

Senator DONNELL. All right.

Now, the union shop, as I understand it—if I am wrong, I am subject to correction—I understand that the union shop as contemplated



by the Taft-Hartley Act is one in which there is an agreement between the employer and the employee to this general effect: The employer may select his own employees. He is not confined to somebody who is already in the union, as is the case in the closed shop.

In the union shop the employer may select the person, take this man or not take the other one; has freedom of choice which he does not have in the closed shop. If he takes the man, the man himself does not have to agree to anything. The man may stay 20 days and decide he wants to get out. It is all right, but after he gets in, after the employer has selected him, used the freedom of selection, and the employee has got the freedom to go in without having first to be forced into an organization, then the union shop is one which contemplates that if a man stays in, within the time prescribed—in this case 30 days—he then is to join a union. That is a correct statement, I think, of a union shop.

Mr. STEINKRAUS. That is right.

Senator DONNELL. That is different from a closed shop.

Mr. STEINKRAUS. Very different.

Senator DONNELL. I infer, though I am not sure this is correct, you think there is some justification for this union shop as I have attempted to define it?

Mr. STEINKRAUS. I hope the union shop would solve the problem of removing the closed shop from—

Senator DONNELL. In other words, the closed shop permits no freedom of choice by the employer. He has to take a man that is in the union; a man cannot get a job unless he is in the closed shop. In a union shop, the employer has the freedom of choice. He can choose or not choose. The employee can determine whether or not he is going in; likewise, subject to his employment by the employer, but if he goes in and stays a certain time, he is then expected to join the union.

Mr. STEINKRAUS. Senator, may I reemphasize something I said earlier this afternoon. I might say it in a little different way. The union does require some kind of security.

Senator DONNELL. Yes.

Mr. STEINKRAUS. But the security that it needs has got to be somewhat in proportion to the responsibility that it has.

Senator DONNELL. Yes, sir.

Mr. STEINKRAUS. And, therefore, where you may require a union shop, or in the past have had a closed shop, that is one thing quite different from an industrial concern where maintenance of membership and check-off of dues may be all the security that that union needs. I think that we may not be differentiating between those different conditions in interpreting our laws or in our thinking of how to correct certain things.

Senator DONNELL. As I understand it, you are in hearty accord, if I might just interrupt you, with the statement of the United States Chamber of Commerce on the subject of the closed shop?

Mr. STEINKRAUS. Yes, sir.

Senator DONNELL. And then you have expressed your views and were about to continue with them as to the union shop.

Go right ahead, Mr. Steinkraus.

Mr. STEINKRAUS. I think I made them clear before.

Senator DONNELL. Very well. Thank you.

Senator Taft, pardon me for taking so much time.

Senator TAFT. Senator Morse has some questions.

Senator MORSE. I have a couple of questions I would like to ask you. First, I would like to ask your opinion in regard to the political restrictions in the Taft-Hartley law.

Do you favor those restrictions?

Mr. STEINKRAUS. As to personal consideration of it, I really have not given it enough thought to have a very definite opinion on it. Frankly, I do not think it has been of major importance in the attempt to get good labor relations, good labor-management relations.

Senator MORSE. You will agree, will you not, that labor generally opposes the political restriction activities? In your opinion, is it the policy of the United States Chamber of Commerce to participate in political activities?

Mr. STEINKRAUS. No, sir.

Senator MORSE. I want to read to you a news comment from a paper in my State, under date of May 17, 1947, and have you answer the question as to whether or not you think it represents any political activity on the part of the United States Chamber of Commerce:

MORSE RATES "PRAYER IN HEART"—SPEAKER FEARS SOCIALIZATION

Senator Wayne Morse of Oregon, Friday, was made the object of prayer by the national affairs adviser to the western division of the United States Chamber of Commerce, J. D. Allen, who was speaking to the Eugene chamber forum in the Eugene Hotel on "Preserving Our Free Institutions at Crossroads America."

The CHAIRMAN. Does it mention whom they prayed to? [Laughter.]

Senator MORSE. You can judge for yourself as to whether or not this was not a prayer to the business men to do something about it.

Mr. STEINKRAUS. That was not political; that was religious.

Senator MORSE (reading):

Departing from his prepared speech, Allen told chamber members that "we don't care how far off the reservation Claude Pepper and his kind go—the farther the better."

Senator PEPPER. I want to thank them. You get me the address.

Senator MORSE (reading):

"But when a man of the standing, character, integrity and influence of our beloved Wayne Morse finds himself crosswise in the bed with the majority of his own party and even with half his colleagues in the Democratic Party as he is on the labor issue, then I think he should take a statesmanlike position and agree to vote for this labor legislation."

The National Chamber man said he felt that Morse had gone about as far as he could go in maintaining his own personal integrity through his votes—"Now," he said, "he should follow the example of Ives and others who fought the legislation shoulder to shoulder with him, and bow to the majority."

Allen disclosed that in a recent talk with Senator Robert Taft, the Republican leader told him that "should the President veto the labor bill, the matter of politics would become an essential element, and many Democrats might change their votes to sustain his veto."

"Taft felt that if Morse were to reverse his stand, it would break the backbone of the Peppers in Congress," Allen said, "and I'm saying a little prayer in my heart that he'll find the way."

[Laughter.]

Mr. Allen went across my State and he spoke to a good many chamber of commerce people. I have excerpts from other Oregon

papers in which he said in effect the same thing, resulting in a series of editorials such as the one in the Oregon Statesman from May 22, 1947.

#### CONVERTING SENATOR MORSE

Jacob D. Allen, listed as national affairs adviser for the United States Chamber of Commerce has been "advising" Oregon businessmen to turn some heat on Senator Wayne Morse "to get him to bow to the majority" of his party on pending labor legislation. Allen refers to the fact that Morse and two others were the only Republicans voting "no" on the Senate omnibus labor bill.

Allen doesn't know our Wayne. Such advertised pressure will merely get Morse's back up. It will give him an opportunity to make another long statement or a speech in the Senate. Allen should know that Morse votes "for conscience' sake." Taking a stand on principle, he hurls defiance at all his foes. Allen can just wash out any hope that Morse will vote to repass the labor bill over a Presidential veto.

Oregon must prepare itself for a round or double round of Morse addresses to justify his action on the labor bill when the session ends. His method will not be one of apology or of explanation but of attack. He will prove, both to management and labor, that all were out of step but Morse.

Mr. Chairman, may I have the rest of these placed in the record at this point?

The CHAIRMAN. It is so ordered.

(The newspaper excerpts referred to are as follows:)

[From the Portland (Oreg.) Journal, May 24, 1947]

#### KEY LABOR VOTE IN MORSE HANDS, CHAMBER TOLD

Senator Morse holds the crucial vote which will determine whether labor legislation now before Congress will pass over a possible Presidential veto.

This assertion was made before the board of directors of the Portland Chamber of Commerce Friday by J. D. Allen, who is in charge of the western division, United States Chamber of Commerce. He recently completed an extensive tour of Europe and now is visiting Oregon's chambers of commerce.

If Morse votes for the proposed labor legislation, many Senators will follow his lead rather than stand behind the Pepper-Murray coalition, Allen declared.

"We must have labor legislation now if America is to have industrial peace. If the bill has some defective features, as Morse fears, these can be ironed out later, but we must have something to start with to stabilize our economy," Allen said.

Allen believes the Portland chamber should provide leadership and guidance to the smaller chambers and groups throughout the State in order to gain a stronger voice in Congress for regional projects and development.

"The biggest lobby in Congress today is not formed by any labor, business, or commercial group but by agencies of the Federal Government fighting to maintain their budgets and personnel although their usefulness has expired," he said.

To counteract "propaganda" from the East, which asserts that the West has been receiving the larger share of reclamation funds, Allen suggested that the western chambers circulate nationally the argument that the development of Northwest natural resources would contribute extensively to the economic well-being of the Nation.

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[From the Eugene (Oreg.) Register Guard, May 16, 1947]

#### MORSE ASKED TO FALL IN LINE

Senator Wayne Morse, of Oregon, Friday, was made the object of prayer by the national affairs adviser to the western division of the United States Chamber of Commerce, J. D. Allen, who was speaking to the Eugene chamber forum in the Eugene Hotel on preserving our free institutions at Crossroads American.

Departing from his prepared speech, Allen told chamber members that "we don't care how far off the reservation Claude Pepper and his kind go—the farther the better."



## SHOULD CHANGE

"But when a man of the standing, character, integrity, and influence of our beloved Wayne Morse finds himself crosswise in the bed with the majority of his own party and even with half his colleagues in the Democratic Party as he is on the labor issue, then I think he should take a statesmanlike position and agree to vote for this labor legislation."

The National Chamber man said he felt that Morse had gone about as far as he could go in maintaining his own personal integrity through his votes—"now," he said, "he should follow the example of Ives and others who fought the legislation shoulder to shoulder with him, and bow to the majority."

## SEES POLITICS

Allen disclosed that in a recent talk with Senator Robert Taft, the Republican leader told him that "should the President veto the labor bill, the matter of politics would become an essential element, and many Democrats might change their votes to sustain his veto."

"Taft felt that if Morse were to reverse his stand, it would break the backbone of the Peppers in Congress," Allen said, "and I'm saying a little prayer in my heart that he'll find the way."

## PRAISES CHAMBER

Allen's formal speech concerned itself with a plea for support for the chamber of commerce organization, as "the truest cross section of America and the ablest group to carry the fight for competitive, individual enterprise under free government."

He likened the chamber to "a series of ties, linking free enterprise with free government—ties which, like railroad ties, bind two steel lines together, over which the industrial, social, and moral life of America can be conducted to ever greater and more glorious ends."

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[From the Salem Capital Journal, May 21, 1947]

## PRESSURE ON SENATOR MORSE FOR LABOR BILL VOTE URGED

Members of the chamber of commerce who listened Tuesday afternoon to a talk by Jacob D. Allen, national affairs adviser for the Chamber of Commerce of the United States, were advised to exert some pressure on Senator Wayne Morse in an effort to get him to bow to the majority relative to labor bills that have passed both Houses of Congress and are now in conference.

Allen had much to say in praise of Morse, but described him as crosswise in bed with the majority of his own party and even with half his colleagues in the Democratic Party.

"He should," he said, "follow the example of Ives and others who fought the legislation shoulder to shoulder with him, and now bow to the majority."

## OPPORTUNITY FOR MORSE

Allen said that in a recent talk with Senator Taft, the Republican leader told him that "should the President veto the labor bill the matter of politics would become an essential element, and many Democrats might change their votes to sustain his veto."

"Taft felt that if Morse were to reverse his stand it would break the backbone of the Peppers in Congress."

Speaking on national legislation in general Mr. Allen, who recently came from Washington, indicated a possibility that some of the appropriation cuts affecting western development will be restored. There is no disposition, he said, in either branch of Congress to hamstringing western development, and he had the word of Speaker Joe Martin that if Congress could be shown it was hamstringing self-liquidating projects it would not go for it.

## BUREAUCRATS SELFISH

"As for the bureaucrats," he said, "their No. 1 job is to keep the boys on the pay roll and they will cut development projects to do it \* \* \*. In many States there are more people on the Government pay roll than on the pay rolls of the State itself and the municipalities combined."

The United States Chamber of Commerce, Allen said, sees no reason for a depression, "provided we can maintain industrial peace. To do that we must protect the rights of collective bargaining, business operation, and the public. \* \* \* The statements of both parties and the best minds in labor are agreed that there must be some labor-control legislation."

Senator MORSE. Now I ask you, Mr. Steinkraus, do you think Mr. Allen was participating in political activity?

Mr. STEINKRAUS. Why, you really do not expect me to say no.

Senator MORSE. I do not see how you could.

Senator TAFT. It is not the kind of political activity forbidden by the Taft-Hartley law.

Senator MORSE. That is what I want to impress on you.

Mr. STEINKRAUS. He had a religious slant to it.

Senator MORSE. A lot of fervor, all right. Does the United States Chamber of Commerce pay the expenses of men on such trips as that?

Mr. STEINKRAUS. Senator, I think that taking a clipping from a newspaper and giving an offhand answer is very different. You read a lot of things in the newspapers. It all depends on the slant the writer may put on it at the time. I do not know anything about this. I cannot give an intelligent answer to something that you are probably thoroughly familiar with.

Senator MORSE. I want to examine you further on this particular story. Let me say, Mr. Steinkraus—

Mr. STEINKRAUS. I think it can be said that the Chamber of Commerce has no policy to go into politics. We have certainly Republicans and Democrats in the chamber and on the board. I have never heard the question of politics raised in an issue to determine whether or not one action should be taken or another.

Senator TAFT. Who is this J. D. Allen? I do not remember this conference that it referred to.

Mr. STEINKRAUS. I do not know.

Senator TAFT. An agent of the Chamber of Commerce? He says national-affairs adviser to the western division. You do not know him?

Mr. STEINKRAUS. No, sir; I do not.

Senator PEPPER. I understand that the Democrats pray for Senator Morse, too. We want him on our side.

Mr. STEINKRAUS. Believe me, it is fine when both sides want to see that a man makes good progress.

Senator MORSE. I want to make this comment. This consistency with which this speaker speaks across my State leaves no room for doubt as to what his recommendations were. I would like to contribute to his expenses because I can think of no better way to campaign in Oregon than to get Allen out there making those speeches, but my serious question is, When a man from the United States Chamber of Commerce goes out on a speech tour, he gets his expenses from the chamber, does he not?

Mr. STEINKRAUS. I suppose so. I do not know.

Senator MORSE. And he is paid a salary by the chamber.

Mr. STEINKRAUS. I have done a lot of things for the chamber. I have never had a dime, so I would not be able to answer.

Senator MORSE. I wonder if you could not give me an opinion whether or not you think the man—

Mr. STEINKRAUS. If I knew the man, what his job was—

Senator MORSE. It says, all the stories say, he was a national-affairs adviser for the western division of the United States Chamber of Commerce.

Mr. STEINKRAUS. If he is on the staff his expenses would probably be paid, but I recognize this fact, that our national-affairs program is a part of the chamber program to interest American people in national affairs.

Senator MORSE. I suppose the political-education division of the American Federation of Labor is similar, do you not think so?

Mr. STEINKRAUS. I do not know enough about their programs to say.

Senator MORSE. We have to judge by what we see.

Mr. STEINKRAUS. If we are going to have the country we want to have, we have got to get all people to think about our national affairs.

Senator MORSE. I agree, and I wish you would join me therefore in changing the Taft-Hartley law so that the labor unions can participate in politics, just as I think the businessmen, directly or indirectly, always have. I do not like a restriction on their political activities. Why should they not participate in politics?

It will strengthen our democracy, and I only cited the incident good-naturedly, and I think you can see somewhat facetiously. I think that businessmen, the United States Chamber of Commerce, the National Association of Manufacturers or anybody else, if they do not like the junior Senator from Oregon, should be free to go out and campaign against me.

I will welcome it in those instances, and if labor does not like somebody, it ought to be able to engage in political activities. The type of restriction that is imposed upon labor in the Taft-Hartley law ought to be removed.

Senator TAFT. I do think we ought to put in the record at this point what this act does:

It is unlawful for any corporation or labor organization in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for.

The prohibition extends only to the actual election. I would say I have never supposed that it extended or any labor organization thinks it extends beyond to the election itself. Fortunately, the Senator is with us for 4 years more.

Senator MORSE. I would like to say to the Senator from Ohio I am always running for re-election. I have to.

Mr. STEINKRAUS. I would just like to say that is one thing on which your committee does not need any advice. You know more about that political situation than I do. I think if you thresh that out among yourselves, you do not need us fellows. You are so much closer to that picture.

Senator MORSE. I think we need your support in getting rid of this restriction on political activity. It does not make a bit of difference to me.

Seriously, speeches such as this, speeches by vice presidents of the NAM that have been made in my State saying that Oregon ought to get a new Senator, are all right, but you would just be kidding your-



selves if you tried to maintain the position that they are not made for political purposes. Of course they are in politics and, of course, they have an effect on any election, and, of course, that is why they are made.

I think they ought to be made, if that is the way people think. Likewise, the labor boys ought to have the restrictions taken off them.

That is all, Mr. Chairman.

Senator MURRAY. I have no further questions. I want to thank the witness for his appearance here today and for the frank and courteous manner in which he has answered all our questions.

Senator DONNELL. I would like to join with Senator Murray in that expression from our side of the table.

Senator MURRAY. I thank him for the manner in which he has proceeded.

Mr. STEINKRAUS. I want to thank the committee very much. I appreciate the opportunity of being here.

Senator MURRAY. Now this morning I released the witness, Mr. Mosher, during the absence of the Senator from Minnesota, and I understand that he would like to be able to ask him a few questions, and I would like to get him back here for Monday if we could.

Senator MORSE. We will make an endeavor to get Mr. Mosher back. I do not know what position Mr. Mosher will find himself in as to other commitments he may have. We will certainly endeavor to get him Monday or such other time as we can for the mutual convenience of the Senator from Minnesota and Mr. Mosher.

Senator MURRAY. The hearing is adjourned. We will reconvene at 9:30 tomorrow morning.

(Whereupon at 5:40 p. m., the hearing was adjourned to reconvene on Saturday, February 19, 1949, at 9:30 a. m.)



## LABOR RELATIONS

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SATURDAY, FEBRUARY 19, 1949

UNITED STATES SENATE,  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D. C.*

The committee met, pursuant to adjournment, at 9:30 a. m., Hon. Elbert D. Thomas, chairman, presiding.

Présent: Senators Thomas (chairman), Murray, Pepper, Hill, Neely, Douglas, Withers, Taft, Aiken, Smith of New Jersey, and Donnell.

The CHAIRMAN. Is Mr. Feinsinger here? (No response.)

Senator DONNELL. We would be glad to go ahead with Mr. Young, if you would desire us to.

The CHAIRMAN. We will have Mr. Young, then.

Senator DONNELL. Mr. Howard Young.

The CHAIRMAN. Are you ready?

Senator DONNELL. Yes, sir.

Mr. Chairman, I am going to ask the same privilege that has been accorded to one or two gentlemen that I have availed myself of to introduce Mr. Young to the committee, if I may.

The CHAIRMAN. We are glad to have you.

Senator DONNELL. I want him to know you gentlemen personally, too.

Let the record show that the witness who is to testify is a valued friend of mine, and whom I have known, and who stands in the highest esteem of the people of our community in St. Louis. I have known him for many years.

He is chairman of the board of directors of the St. Louis Chamber of Commerce. He is the president of the American Mining Congress; he is the president of the American Zinc, Lead & Smelting Co. of St. Louis, Mo. He is a man of unimpeachable reputation and character, and one whom I am pleased to vouch for in every respect to this committee.

I may say, as a matter of personal pride, that in another official capacity of mine I had the privilege of conferring upon the Colonel an honor, and I always appreciated the privilege of granting that to him.

Mr. YOUNG. Thank you very much, Senator Donnell.

### STATEMENT OF HOWARD I. YOUNG, PRESIDENT, AMERICAN ZINC, LEAD & SMELTING CO., AND PRESIDENT OF AMERICAN MINING CONGRESS

The CHAIRMAN. Mr. Young, for the record, will you state what you want to have appear in connection with your name in the record, and give the committee your address.



Mr. YOUNG. My name is Howard I. Young. I am president of the American Zinc, Lead & Smelting Co. of St. Louis, Mo., and am president of the American Mining Congress, a national organization of the mining industry, with headquarters in Washington, D. C.

During the war period 1943 and the first half of 1944 I served as chairman of the National Resources Division of the War Production Board, and as deputy vice chairman of the Minerals and Metals Division during the first half of 1944.

Included in the membership of the American Mining Congress are producers of coal, metals, and nonmetallic minerals throughout the country.

I understand that the coal producers' experience under the existing Labor-Management Act will be presented by other witnesses, and I shall confine my remarks to the situation in that section of the mining and smelting industry with which I am personally familiar.

Senator DONNELL. May I interrupt to call attention to the fact that your opening statement is confined to 10 minutes, and there will be 20 minutes of cross-examination which, I have the privilege on behalf of our division, of conducting. But your initial presentation is 10 minutes.

Mr. YOUNG. Thank you very much, Senator.

This section of the industry is responsible for the production of the strategic and critical metals which are indispensable to national defense. I am sure you will agree that any activities on the part of unions which are intended to bring about, or which necessarily result in, curtailment of production of these strategic materials are in effect a direct attack upon our national safety, and therefore are of peculiar and special interest to the Congress. For this reason I feel warranted in telling the committee about the experience which our company has had with a union whose leaders have been identified as associated with communistic activities, as I shall shortly point out.

I have spent approximately 45 years in the mining and smelting of zinc. I began work as a common laborer and have successively progressed through various types of employment to my present position.

Our company normally employs 2,500 to 3,000 men at seven principal operating plants, located as follows: Mines—a mill and a stone plant near Knoxville, Tenn.; a mine and mill at Meteline Falls, Wash.; zinc smelters at Fairmont City, Ill., and Dumas, Tex.; zinc-oxide plants at Hillsboro, Ill., and Columbus, Ohio; and an electrolytic-zinc plant at Monsanto, Ill.

Protection against communism: I wish to tell you about the experience we have had with a strike now almost 6 months old, involving four of our plants and still continuing at three. This strike was called by a Communist-dominated union after we had refused to recognize or deal with it until its officers would sign the non-Communist affidavits specified by the present labor law. Our decision to take this stand was made because we were faced with an intolerable situation in some of our plants brought about or encouraged by Communists in the union. Throughout the entire period of the strike we have continued to deal with non-Communist CIO unions at three of our plants. We have recently signed a contract with an A. F. of L. union at Columbus, Ohio, which was one of the struck plants. Our labor relations in all of our plants which are operating are excellent.

The striking union is the International Union of Mine, Mill and Smelter Workers, CIO. The CIO itself, including its president, has denounced leaders of this union as Communists. An official investigating committee of the CIO appointed by Philip Murray and consisting of Jacob S. Potofsky, president of the Amalgamated Clothing Workers, Van A. Bittner, vice president of the United Steelworkers, and L. S. Buckmaster, president of the United Rubber Workers, investigated this union and issued a report in May 1947. This report stated that the then president (and now secretary-treasurer) of the Mine, Mill and Smelter Workers was continuously dealing with representatives of the Communist Party in shaping the policy of the union; that union representatives were busy not only in attempting to organize the members of the union, but any other they could, into the Communist Party, and that field men discharged by other unions for attempting to organize workers in the Communist Party were being hired by the International Union of Mine, Mill and Smelter Workers.

The local unions of all seven of our plants were at one time affiliated with the International Union of Mine, Mill and Smelter Workers. The unions at three of these plants—those at our Monsanto, Ill., electrolytic plant, our Dumas, Tex., smelter, and our Tennessee mines—seceded from the mine-mill union in 1947 and 1948, and their leaders told us that their dealings with the international officers of the union had convinced them that these officers were Communists. More than 65 locals representing employees of various companies have seceded from this union in the past 2 years over the Communist issue. Some of the officers of this union have been banned from Canada by the Canadian immigration authorities.

So that you gentlemen may know something of the difficulties which a company goes through when it has a Communist-controlled union in its plants, I want to tell you briefly of some of the obstacles placed in the way of efficient operation by the local union at our Fairmont City smelter. While we had difficulties at other plants represented by the mine-mill union, the Fairmont plant is larger and presented the most fertile ground for trouble-making activities. Bear in mind as I tell you of our experiences that the Communist in labor has entirely different objectives than the non-Communist labor leader. The goal of the non-Communist labor leader is to secure the greatest possible economic benefits for his members. Many unions seek to accomplish this by establishing cooperative and stable relations with management so as to increase the production and profits of the plant. Because Communists in labor have other objectives, their planned tactics frequently interfere with stable relations and with efficient production. To promote class warfare it is necessary for Communists to encourage the union to be "militant" and to keep labor relations in an unsettled state. I also want to make it clear that I believe the overwhelming majority of our striking employees are good loyal Americans and not Communists; but a small, well-organized minority in a labor union can stir up all the trouble they desire and it is very difficult to take action against those who are behind the trouble.

Since 1940, when the International Union of Mine, Mill and Smelter Workers began to exert a dominating influence upon the local union activities, our labor relations have progressively deteriorated. It be-

came more and more obvious that the union executive committee, which also functioned as a grievance committee, was continuously being indoctrinated with the principle that they must be "militant" in their inroads upon the company's management of its operations, even to the point of total dictation as to the manner in which the plant should be run. Its "militancy" is a frequent boast of the International Union of Mine, Mill and Smelter Workers in its official publication, the Union.

Among the extraordinary devices resorted to in the general plan of demoralization were—

(1) Persistent efforts to keep the working force in constant turmoil by stirring up groundless grievances.

(2) Making numerous demands for wholly unreasonable rate adjustments, increase of working force on various jobs, and reduction of the work content on various jobs.

(3) Encouraging employees to refuse to carry out foremen's instructions.

(4) Advising employees to enforce their demands by persistent refusal to work unless their demands were acceded to, and threatening them with fines if they did not carry out union instructions.

(5) Engaging in general slow-downs and deliberate loafing on the job.

(6) Engaging in work stoppages and strikes without justifiable cause.

(7) Ordering employees not to work overtime, even on emergency repair jobs necessary to carry on plant operation; in one case, an employee was fined by the union because he volunteered to aid, while on his vacation, in protecting company property threatened by a flash flood.

(8) Reference to the company as the "common enemy" of the workers.

Neither time nor space permits a full recital of all of the means resorted to to accomplish the plan of demoralization. A few examples will serve to illustrate the devices employed.

In August 1943, at the height of the war, the metal-handling crew at the Fairmont plant engaged in a slow-down strike to force the management to accede to unreasonable demands. This case was finally disposed of by arbitration, in which the management's position was completely sustained by the arbitrator. In April 1944, the wildcat strike lasting almost a week took place because of the company's refusal to continue employment of a man disabled by paresis, who later was committed to a State hospital for the insane.

Commencing on November 26, 1945, there was a 2-month strike to enforce economic demands of the union.

The union committee repeatedly made demands for such items as free clothing, special rate adjustments, increasing the work force on various jobs, and so forth, as grievances after these issues had been settled by contract negotiation. The rejection by company management of such demands was met by threats of work stoppages. Many arbitrary decisions were made by the union committee affecting the methods of work performance, and the committee made sure that such decisions were carried out by threatening to fine members who did not comply with their instructions. These tactics were accompanied by a



noticeable slow-down which we are convinced was the result of union orders.

Unreasonable demands with respect to overtime lunch allowances were made, and the men were instructed by the committee not to work overtime unless their demands were met. When the company agreed to these demands the union committee declined to withdraw its instructions against overtime work, and in addition encouraged a general slow-down. Abuse of the system of punching time cards became very common. Employees would leave the plant early and other employees would punch their cards for them. Since the gateman were members of the same union and would not cooperate with management to control this situation, the company accordingly posted a notice that the armed plant guards who had been placed at the gate for security purposes had been directed to watch for infractions of the rules. The union committee immediately demanded that the management take these notices down since the union had not been consulted before putting them up, and threatened that if such notices were not taken down, the committee would instruct the union members not to punch their cards at all.

The union executive committee frequently held extended meetings on company time and, although the management made many protests, the committee continued this practice. There were a number of instances in which employees refused to carry out the instructions of their foremen; the union committee defended such actions and in some cases encouraged it. It became common for the members of the union executive committee to leave their jobs without notice and without permission to roam through the plant to stir up grievances, so that there would be a goodly number to present at the next plant grievance meeting.

An employee on vacation who lived near the plant, and who responded to an appeal to help out in the case of an emergency caused by a flash flood, was fined by the union for entering the plant while on vacation. The committee frequently instructed employees what work they should do and what work they should not do, regardless of past practices.

Although it has been the practice of the company for years to have construction work and large repair jobs in the plant handled by outside contractors, in June of 1947 the union objected to the contracting of repairs on a large acid-storage tank. This was a heavy job which could best be handled by an outside contractor, who could complete it many months earlier because he had the necessary steel for the job. By reason of a threatened walk-out on the part of the union completion of the job was delayed for several months.

During the time when the employees of our Hillsboro zinc-oxide plant, 60 miles distant from Fairmont City, were considering secession from the mine-mill union, the union leaders at Fairmont City urged the Hillsboro employees to stay in the mine-mill union so that they could continue their fight together against their "common enemy, the American Zinc Co." So long as the local union leadership was being taught that the company was their "common enemy," it was apparent that any hope for good labor relations was futile.

Slow-downs, wildcat strikes, and unreasonable union demands were not confined to our Fairmont City plant but also were experienced in other plants where the local unions were affiliated with the Mine-Mill

Union. Nor were these experiences peculiar to the American Zinc Co. Numerous strikes had been called in the mining industry between the time of the Hitler-Stalin pact in August 1939 and the German attack on Russia in June 1941. Since the war, also, there have been many strikes in the metal mining industry, of which the prolonged strikes against the Eagle-Picher Mining and Smelting Co. and the St. Joseph Lead Co. are two of the most recent.

You may wonder why the plant management permitted the practices described to continue. I might explain that the zinc, cadmium, and sulfuric acid produced by the plant were of vital importance to the defense program, and the unreasonable and belligerent attitude of the union leadership had convinced the management that a shut-down, with loss of badly needed war production, would follow the taking of proper disciplinary action. Due to the fact that the zinc furnaces at the Fairmount City plant will collapse if heat is not maintained, necessitating complete rebuilding, a shut-down is much more serious in a zinc smelter of this type than in many other types of plants. Refusal of the plant management to give in to union demands was frequently met by such threats as: "If we don't get this, the men won't work," and "Let's pull the plant out now, boys."

Up until the spring of 1948, it had been our feeling that there was little that management could do about communism in this union which dominated the mining industry. We had hoped that the common sense of the miners and smeltermen would eventually drive the Communists out of this union. It had become apparent, however, that practically all of the non-Communists among the international leadership had either resigned from the union or had been forced out, and we concluded that only by giving a clear understanding of the situation to the great majority of loyal Americans among our employees, could communism be driven out of our plants.

We felt that in writing the non-Communist affidavit provision into the Labor-Management Relations Act of 1947, Congress intended to help management rid its labor relations of the plague of Communist influence, as well as to protect the individual worker against Communist exploitation.

We believed that if we continued to sign contracts with a union which we knew to be Communist-dominated, we would be defeating the intent of Congress and permitting a situation to continue which was harming our employees as well as the company. We felt that sooner or later we were going to have to face the issue of communism; and in view of the critical international situation in the spring of 1948, we became convinced that it was in the national interest for us to face the situation immediately. For this reason in May 1948, we announced to the International Union of Mine, Mill, and Smelter Workers and to the local unions at our Fairmount City, Ill.; Hillsboro, Ill.; Columbus, Ohio; and Metaline Falls, Wash., plants, that we would not recognize this union nor negotiate with it, until its officers and the officers of the locals filed the non-Communist affidavits as specified by the law. Our contracts with all of these locals expired on June 30, 1948. We have had strikes at three of them since that time.

On July 1, the employees of our Metaline Falls, Wash., plant went out on strike, but a strike was deferred at the other three plants until August 13. After we had announced our position and before the

strike occurred, we advised all of our employees by letters that we were not trying to break the union; that we would immediately recognize this union or any other union the majority of our employees selected, if they would file the necessary non-Communist affidavits; and that we would continue wages, employee benefits and working conditions then in effect if the employees would continue to work without a contract until such time as their union filed the non-Communist affidavits. We also sent to each employee a 14-page document concerning communism in the International Union of Mine, Mill and Smelter Workers so that they would understand the reasons for the company's position.

The strike, which was 7 months old at Metaline Falls, Wash., on February 1, and which will be six months old at Fairmount and Hillsboro, Ill., on February 13, has been accompanied by many instances of intimidation, coercion, violence, and mass picketing. The union representatives at our Fairmount City plant refused to let supervisors enter the plant for the first 4 weeks of the strike, and until the company obtained an injunction in the State court. Accordingly, it was necessary for the plant supervisory staff to remain inside the plant for this period of 4 weeks, in order to keep the furnaces heated and the other equipment from being damaged or destroyed. Since the injunction, supervisors have been permitted to enter the plant, but to this day the union has kept out maintenance men from the power company who wished to enter the plant to repair damaged power lines belonging to the power company. Five union pickets and the local union were found guilty of contempt of court in preventing the Pennsylvania Railroad from removing some 50 cars which had been in the plant at the time of the strike, and were fined a total of \$1,500.

At our Metaline plant a small group of employees who denounced the Communist leadership of the union continued to work and we obtained an injunction in order to protect them. In spite of this injunction, in December of last year a gang of 15 or more strikers pursued a nonstriking employee, broke into the house of another nonstriker where he had taken refuge, brutally assaulted both of these employees, dragged one of them from the house and took him in a truck to the union hall where threats and beatings were continued. At about the same time, strikers threatened and beat another nonstriking employee until he became unconscious and then locked him, together with a fourth employee, in the town jail, which was at the time unoccupied and unguarded. Those strikers who were identified were arrested by local law enforcement officers and charged with assault, burglary, and kidnaping, and their trial is set for sometime in March. The union has publicly blamed the company for the arrest of their members and is busy attempting to raise a large defense fund.

The strike at our Columbus, Ohio, plant has been marked by a great deal of violence. Approximately 18 of our employees voluntarily attempted to return to work early in November. The union massed some 60 pickets at the gate so that those employees who desired to return to work could not enter. The pickets, led by international representatives, refused to disperse on orders of the sheriff, who read the Ohio Riot Act. The company then obtained an injunction to prevent mass picketing, and to permit employees who desired to work to enter and leave the plant. This injunction was frequently violated and the automobile of one employee who had returned to work

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was overturned as he attempted to drive into the plant. As a result of these disturbances, four of the strikers were sentenced to 10 days in jail for contempt of court, and were indicted for malicious destruction of property. On December 12, in a swift, hit-and-run attack, a group of strikers descended on company employees who were seated in their cars several blocks from the plant waiting to enter the plant together, and with iron bars smashed all the windows and windshields of three cars and beat four employees of the company, including the assistant superintendent of the plant, on their heads and bodies. The assistant plant superintendent and one other employee required treatment at a hospital, both cases requiring many stitches to close the lacerations on their heads. As a result of this attack five of the strikers who were identified were sentenced by the Columbus Municipal Court, the sentences ranging from 2 months to 9 months in jail together with fines. In addition there have been numerous cases of employees being attacked and beaten up by groups of strikers, and of bricks being thrown through the windows of nonstriking employees at home at night.

The pattern of keeping employees who desired to return to work from doing so has been the same at all of our plants. Many of our employees have told us that they have been threatened with bodily harm to themselves and to their families and damage to their homes if they did not follow the dictates of the union leaders who were conducting the strike. In Fairmont City a Catholic priest reported that he had been threatened by the strike committee of the union for speaking against communism and declaring that the signing of non-Communist affidavits is a sign of American loyalty.

I have told you our story so that you may know what it means to be forced to deal with a Communist-dominated union; but unless you have had such an experience you cannot fully comprehend what a formidable and treacherous foe Communists can be. Their propaganda machine is extremely clever, and they are past masters at fabrication and twisting facts to serve their own purposes. They have goon squads well trained in planning and carrying out violence and intimidation who are used for just such purposes and are sent around the country where needed, to each plant to help carry out their work. Most employers have had no experience with such tactics and are badly handicapped in their efforts to combat them. A main feature of the Communist program is to create distrust of employers in the minds of their employees and this adds to management's difficulties in combating the Communist propaganda and getting employees to understand the true facts.

We know from bitter experience that Communist control must be removed from the mining industry and this is equally true of all industries in which it still maintains a foothold. We feel that our protection from communism is in the hands of this committee. We are dealing here with a menace to the safety of our country. Unless you can devise an even more effective means of ridding the labor movements of communism, I strongly urge you to retain and strengthen the anti-Communist affidavit provisions of the present law. I think it would likewise be advisable to make these provisions apply to employers so as to eliminate the complaint that labor is being discriminated against.

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Our country is spending billions of dollars in an endeavor to prevent communism from spreading beyond the iron curtain. We surely should not be remiss in our endeavors to prevent communism from further infiltrating into our labor unions, and to eradicate its baneful effect wherever a foothold has been obtained.

We urge the retention of the non-Communist affidavit, but that also it be broadened to require management to sign the same affidavit. We think that is fair in our relationship with our labor.

The freedom of speech provision in the present law has been one of the most important provisions of the law from the standpoint of improving labor relations. More than any other thing, good employer-employee relations are dependent on management and labor each understanding the viewpoint of the other. It is essential for employees to have some knowledge of the problems which management faces, of the reasons why management cannot always grant labor's demands, and of management's side of the story in case of disputes. There is probably no place in our national life where a free exchange of ideas is so important as in the relationship of employer and employees. There is no quicker way that I know of to hurt good labor relations in industry than to place a doubt in the minds of employers of their right to speak freely to their employees.

Before the enactment of the existing labor law the National Labor Relations Board by its decisions frequently found employers guilty of unfair labor practices for speaking to employees about the effect of unionization or the course of bargaining negotiations or for urging strikers to return to work. There was so much doubt in the minds of management as to what they could and could not say to their employees legally that there was a tendency to say as little as possible. This was the safe way. The resulting break-down of communications between management and employees was one of the most dangerous trends in labor relations prior to 1947. The freedom-of-speech provision in the present law was a great stimulant to better employer-employee communications and it seems to me that it would be very unfortunate for Congress to omit the freedom-of-speech provision in a new labor law.

During our company's difficulties with Communist-dominated unions we have made good use of this freedom in publishing statements of facts for the benefit of our employees. I doubt very much if we could have spoken out as fully and freely under the old law.

I believe that the exclusion of supervisors from the definition of employees, with respect to whom the present law requires collective bargaining, has had a very beneficial effect. The fears of some that this action would cause resentment on the part of supervisors and would lead to strikes and unrest in the supervisory forces has not materialized. In fact, the result has been just the opposite. The public attention which was focused on the problem of unionization of supervisors during the hearings on the Labor-Management Relations Act of 1947 awakened many managements to the need for strengthening the ties between foremen and the higher ranks of management. As a result many companies in the past year and a half have adopted new programs or have strengthened old programs for making foremen feel that they are truly a part of management. The fact that there have been no strikes in the supervisory ranks in this

period is evidence that supervisors are responding to such programs and that the desire for foremen's unions is diminishing.

It is imperative in the mining industry, from the standpoint of the hazards involved in the safety of men and property alone, that supervisors and other employees who are a part of management be in a position to give their undivided loyalty to their employer. Supervisors are responsible for enforcement of safety codes and State mining laws. They must so conduct mining operations that valuable ore will not be lost. They must at all times be in a position to enforce discipline without fear or favor. It is impossible for them to sit on both sides of the bargaining table in the adjudication of grievances or contract negotiations.

As long as there was no national policy on the matter of unionization of foremen, the supervisors were a fair target for labor organizers who desired to swell the ranks of their unions or to encroach on the functions of management. During the war when wage and salary increases were under Government control it was more difficult to obtain salary increases for supervisors than it was wage increases for hourly paid workers. The necessity of making concessions to unions in connection with matters of discipline in order to insure continued production of the vital materials of war had a tendency to undermine the authority of supervisors and lower their morale. I believe that it was largely as a result of these factors that the unionization of foremen began in certain industries. The exclusion of supervisors from the definition of employees in the law has tended to clarify the status of foremen in their own minds as well as in the minds of higher management. I believe the relationship of supervisors with higher management is immeasurably better today than it was a year and a half ago.

Had our foremen been members of a union, a considerable portion of our Fairmont City smelter would undoubtedly have been destroyed. On the morning of August 13, 1948, without any notice that a strike was about to commence, one of the union leaders blew the plant whistle. Immediately every workman in the plant walked out leaving equipment operating and without any safeguards for its protection. The zinc furnaces were left in a half-charged condition. Pumps were left in operation. Trucks, tractors, and other equipment were left with motors and engines running. It was only by an extreme effort on the part of our supervisory staff that the plant equipment was shut down with a minimum of destruction. Zinc furnaces of the type used at this plant are ruined if allowed to cool. Our supervisors have kept these furnaces heated for the past 6 months so that the furnaces may again be operated when the strike is over.

I believe that the omission in the pending bill of the requirement that unions must bargain in good faith is very unfortunate. I am sure that all of you desire to enact a law which will promote true collective bargaining. It is difficult for me to believe that any right-thinking labor leader would object to an equal obligation on management and labor to bargain in good faith. To impose an obligation of good faith on one of two parties and not on the other is repugnant to our sense of justice in America. The legal obligation to bargain in good faith on the part of both unions and employers was not placed in the law because it was feared a majority of employers and labor organizations would not bargain in good faith, but was placed there



as a safeguard against the small minority on either side of the bargaining table who are not interested in true collective bargaining or in good employer-employee relations. This was particularly a safeguard against subversive elements. To remove the obligation on the part of labor to bargain in good faith is to play into the hands of the Communist labor leader who looks upon collective bargaining merely as a means of driving a wedge between management and labor and weakening the industry of our country.

I believe this committee sincerely feels that there should be a proper balance in the responsibilities and obligations of management and labor. Both should be equally responsible and answerable in carrying out their undertakings and for any violations of contracts which may occur.

The mining industry recognizes that good employee relations cannot be produced by legislation alone. This universally desired objective can only be achieved by understanding, mutual trust and confidence, and a desire to cooperate between labor and management. These necessary elements are a state of mind of the individuals in management and in labor and cannot be legislated; but one-sided legislation which does not provide for equal rights and responsibilities has been found to be a tremendous obstacle in the way of achieving good employee relations. This is not a matter which concerns employers and unions alone but is one which is extremely important to the public welfare because the standard of living which we have achieved in this country cannot be maintained and improved unless sound and co-operative relations exist between management and labor.

We recognize that the right of men to strike for proper purposes should be protected so long as they do not resort to violence, intimidation, or coercion in the course of the strike. However, while we recognize the right to strike, we also think that it is equally vital that the right of men who wish to work should be protected. We therefore favor the restrictions upon compulsory union membership, which are in the present law, with the exception of the requirement that elections be held in union-shop cases.

We also believe that the Congress will wish to protect the authority of the individual States to deal with the matter of compulsory union membership and the protection of the right to work. This necessarily follows from the fact that the Federal Government does not and should not undertake the whole job of local law enforcement. If the States are expected to preserve law and order and to protect persons and property against violence, intimidation, coercion, and other lawless acts, the States must also be left with sufficient authority to legislate in this field. We therefore feel that the provision in the present law which protects the integrity of State laws dealing with compulsory union membership is a sound one and should be retained.

There is nothing inconsistent in recognizing the authority of the State to police unlawful conduct and at the same time asking that they be left with authority to regulate the matter of compulsory union membership. If in the judgment of a State the passage of a law limiting compulsory union membership will help to prevent the creation of situations making police action necessary, then the State should be free to adopt such preventive measures.

In addition to these points as to which we have had actual experience in our company's contact with the International Union of Mine, Mill,

and Smelter Workers I could not close my statement without emphasizing our belief that there are certain other omissions in the pending bill which are of great importance.

I think it is extremely important that the independent status of the Conciliation and Mediation Service be retained. The value of Federal conciliators in assisting in the settlement of labor disputes depends almost entirely upon the confidence which the representatives of management and labor place in the conciliators. Any suspicion of prejudice or bias which exists in the minds of either management or labor toward the conciliator destroys his effectiveness.

I know from having talked with many members of management that, whether or not it was warranted, employers generally felt that there was always the possibility of such bias on the part of conciliators so long as this Service was a part of the Department of Labor. Such a feeling in the minds of management was natural since the Department of Labor was established for the purpose of furthering the interests of labor. Since the enactment of the Labor-Management Relations Act of 1947 a new feeling of confidence in the impartiality of the Federal Conciliation and Mediation Service has grown up on the part of management generally and I have heard of no criticisms of the Service on the ground of suspected prejudice or bias of the conciliators from either management or labor sources.

It is essential that all Federal agencies dealing with management and labor have the complete confidence of both in order to be effective and this is as true of the National Labor Relations Board as it is of the Federal Conciliation and Mediation Service. For this reason I feel that the separation of the prosecuting and judicial functions of the National Labor Relations Board should be maintained. It is inconsistent with our American traditions of justice that charges of illegal acts or unfair labor practices should be tried by the same agency which has filed the charges. The separation of the functions of prosecutor and judge which now exists in the NLRB has greatly increased the confidence which management generally now has in the integrity of the National Labor Relations Board.

I know this committee has very much in mind the matter of national and industry-wide strikes affecting the public health and safety. All I can say on this extremely important subject is that the mining industry is vitally interested and that it is my firm conviction that the economy of our country cannot continue to endure strikes of this character.

Senator DONNELL. May I proceed with the questioning of Mr. Young?

Mr. Young, you were about to speak about the omission in the pending bill of the requirement that unions must bargain in good faith.

Mr. YOUNG. Yes.

Senator DONNELL. Would you tell us why you regard that omission to be very unfortunate?

Mr. YOUNG. The statement is as follows: I believe that the omission in the pending bill of the requirement that unions must bargain in good faith is very unfortunate. I am sure that all of you desire to enact a law which will promote true collective bargaining. It is difficult for me to believe that any right-thinking labor leader would

object to an equal obligation on management and labor to bargain in good faith.

Senator DONNELL. Mr. Young—

Senator SMITH. Senator Donnell, just for clarification, by the "pending bill" you mean the Thomas bill and not the Taft-Hartley bill.

Senator DONNELL. Yes, sir. I mean the Taft-Hartley bill, which contains the provision which makes it obligatory upon labor to bargain collectively and thus create a balance between the previous requirement that management must bargain collectively, does it not?

Mr. YOUNG. That is right.

Senator DONNELL. Yes. In other words, the Wagner Act contained only a requirement that the employer must bargain collectively. The Taft-Hartley Act left that provision in the act but incorporated also a provision making it obligatory upon the employee organization, the labor organization of the employee, to bargain collectively, thus balancing the two; is that correct?

Mr. YOUNG. That is correct.

The CHAIRMAN. Senator Donnell—

Senator DONNELL. Yes.

The CHAIRMAN. The recommendation of the gentleman is that the provision be put in the law that both sides bargain in good faith.

Mr. YOUNG. That is right.

The CHAIRMAN. Now, is not that as much an amendment to the Taft-Hartley law as it is to the Thomas bill?

Senator DONNELL. Well, I think, Mr. Chairman, that the fair meaning of the Taft-Hartley law is just what Mr. Young has stated, but I should certainly have no objection with respect to the incorporation of the words "in good faith."

I take it, that the statement "that it shall be an unfair labor practice for an employer to refuse to bargain collectively with representatives of employees," means that it shall be an unfair labor practice for him to refuse to bargain in good faith collectively.

The CHAIRMAN. I agree entirely with you—

Senator DONNELL. Yes, sir.

The CHAIRMAN. With the phrase "in good faith," that it is not needed.

Senator DONNELL. Yes.

The CHAIRMAN. Because there is no need of the Government suggesting bargaining unless it is understood by everybody that it be done in good faith.

Senator DONNELL. Yes.

Senator TAFT. Well, you see it is still in the statute; you saw that, Senator?

Senator DONNELL. Where is that to which you refer, Senator Taft?

Senator TAFT. 8 (d)—

for the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.

Senator DONNELL. I thank the Senator for calling that to my attention. That appears quite clearly in the Taft-Hartley Act, Colonel Young.

Mr. YOUNG. Yes.



The CHAIRMAN. Yes; but there is no provision there for both sides to bargain in good faith.

Senator TAFT. This is the definition of "collective bargaining."

Senator DONNELL. I think it is, Mr. Chairman, because section 8 says that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees," and then further on it states that it shall be an unfair labor practice for a labor organization or its agents "to refuse to bargain collectively with an employer."

Then, in the same section, namely section 8, is the language to which Senator Taft, with his great familiarity with this bill, has called to our attention, which reads:

For the purposes of this section to bargain—  
this is section 8—

collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours—  
and so forth.

Senator SMITH. A mutual obligation.

Senator DONNELL. Mutual obligation; that is correct, Senator Smith.

Mr. Young, would you be kind enough to state what you opinion is in regard to the closed shop?

Mr. YOUNG. We are absolutely against the closed shop as being an un-American provision, but we recognize in our industry, and do have the union shop, which we think is adequate in our industry to take care of the situation.

Senator DONNELL. That is, by the closed shop I take it you mean a shop in which no one can obtain employment under an agreement between the union and the employer unless he is already a member of the union.

Mr. YOUNG. That is right.

Senator DONNELL. The union shop is one in which a man may obtain employment, although it is provided that he shall join the union within a certain period of time thereafter.

Mr. YOUNG. That is right. He has——

Senator DONNELL. That is correct?

Mr. YOUNG. He has 30 days or whatever you have in your contract——

Senator DONNELL. Yes, sir.

Mr. YOUNG. In which he can decide whether he wants to join the union and remain on the job, or whether he wants to quit.

Senator DONNELL. He has that option.

Mr. YOUNG. That is right.

Senator DONNELL. He may either join or not join, as he may determine, within that period.

Mr. YOUNG. And we have the privilege of selecting our employees to start in with our company.

Senator DONNELL. That is right. So that the difference between the closed shop and the union shop, as I see it, fundamentally is that in the case of the closed shop the employer has no option whatsoever of making his own selection. He must take persons who belong to the union and only persons who belong to the union.

Mr. YOUNG. That is correct.

Senator DONNELL. Whereas in the union shop the employer may make his selection of whom he will accept, although the person selected must, in order to retain his employment, join the union within a certain specified period, namely, 30 days, in the Taft-Hartley Act, and the employee himself has the option of either joining or not joining the union within that time.

Mr. YOUNG. That is correct.

Senator DONNELL. If he does not join the union he cannot retain his employment. Have I correctly analyzed the difference between the two?

Mr. YOUNG. That is right.

Senator DONNELL. You are opposed to the closed shop, but you feel the union shop has merit.

Mr. YOUNG. Yes, sir. We operate in some States, of course, where you cannot have either. In Texas and in Tennessee, that is the situation, where you cannot have either, but we have the union shop at other of our plants.

Senator DONNELL. Now, relating back for the moment to the matter of communism, the communistic affidavit, you have heard the expression, I take it, that this whole subject of alleged communistic interference with industry is a red herring? You have heard that statement made?

Mr. YOUNG. Many times.

Senator DONNELL. On rather high authority, have you not, in our National Government?

Mr. YOUNG. Yes, sir.

Senator DONNELL. Do you agree that it is a red herring, that is to say, something without any foundation? Do you agree to that view?

Mr. YOUNG. I do not.

Senator DONNELL. In your opinion, it is not something just dragged across the road to divert attacks, but is a real substantial evil which you have so graphically described here in your testimony this morning, and which appears so fully in your written statement, and which is filed and made a part of this record?

Mr. YOUNG. Our experience convinces us it was a real serious issue that industry has before it.

Senator DONNELL. It has been suggested, Colonel Young, in the course of these hearings that inasmuch as Communists are notoriously not confined to the truth, may I say, and as you have expressed it here, that they twist the truth, or words to that effect, that they are past masters at fabrication, at twisting facts to serve their own purposes, to quote your exact language, I want to ask you whether or not you nevertheless think that the requirement that there shall be an affidavit of nonmembership in the Communist Party may deter even men who are untruthful because the very fact that there is a penalty provided which may put them in jail, may deter them from telling falsehoods, even though their own inclination might be to tell such falsehoods.

Mr. YOUNG. If I may, I would like to recite our experience on that very point.

Senator DONNELL. Thank you, sir.

Mr. YOUNG. I sat with our committee for 3 hours on the last day of our contract. When the international representative—our local men were all set, they were perfectly willing to sign the affidavit, but they

could not do it as long as they were members of this union. The international representative was present, and I asked him a direct question, "You say you are not a Communist. Then why do you refuse to sign this anti-Communist affidavit?" The reason that he stated was on account of the fact that they had in the past—he did not say they were not at that time—but they had in the past fronted for organizations that had been declared to be communistically dominated and, therefore, that their international officers would not sign the affidavit because the Attorney General might later on bring charges against them for making a false affidavit.

Senator DONNELL. So, am I correct in understanding, Mr. Young, that in your view, even though the Communists are, to say the least, careless with the truth, nevertheless, the very fact that there is a penalty provided, a penalty based on the theory that a false affidavit is perjury, that the requirement for such an affidavit is a very wholesome deterrent and is effective? Am I correct in that statement?

Mr. YOUNG. It is a very wholesome provision, and it is very effective.

Senator DONNELL. Yes, sir, and you advocate, however, that the law should be amended so as to require not only labor-union officers to sign such an affidavit but also officers of the managing corporations by which the labor-union members are employed; is that correct?

Mr. YOUNG. I do.

Senator DONNELL. Yes, sir.

Mr. Young, you refer in your written statement to the Conciliation and Mediation Service. Will you tell us, please, what is your opinion as to whether the Conciliation and Mediation Service should be placed back in the Department of Labor or whether it should be retained as an independent entity totally independent of the Department of Labor, as is the present provision of the Taft-Hartley Act?

Mr. YOUNG. It is my personal opinion that the Conciliation Service is set up for the purpose of bringing about satisfactory relations between management and labor, and that it can do a much more constructive job, that both sides will have a better spirit of confidence in their dealings, if it is handled as an independent agency rather than if it is hooked onto any other department.

Our experience, since it has been on that basis, has been materially better than it was before, although I do want to say this, that in our particular localities where we use the Conciliation Service, prior to the present law, we were fortunate in having a man in charge of that division who handled our situation very well.

Senator DONNELL. Mr. Young, have you had occasion to talk with many members of management on the subject of their feeling of whether this Conciliation and Mediation Service should be in the Department of Labor or maintained as an independent agency, as it is now maintained under the Taft-Hartley Act?

Mr. YOUNG. I have talked with a number, and everyone that I have talked with feels that it should be maintained as a separate, independent agency.

Senator DONNELL. What reason have they assigned for that belief?

Mr. YOUNG. For the reason that the agency, if it were in the Department of Labor or any other department, is responsible to that department. They get their instructions from the head of that department, and if they are under the Labor Department, management would feel



that they are being dominated by those Government officials who handle labor policies.

Senator DONNELL. You are familiar, I take it, Colonel Young, with the fact that in the Thomas bill, the one that is now pending before the committee, the administration measure, that it is provided, and I quote:

The United States Conciliation Service shall be administered under the general direction and supervision of the Secretary of Labor. General policies and standards for the operation of the service shall be formulated and promulgated by the Director of Conciliation, with the approval of the Secretary of Labor.

Mr. YOUNG. Yes.

Senator DONNELL. You think it would be better, as I understand your testimony, to have this agency, the Conciliation Service, independent of the Department of Labor, rather than to have it in the Department of Labor, with the provision that "these general policies and standards are subject to the approval of the Secretary of Labor."

Mr. YOUNG. I feel it should be maintained as at present.

Senator DONNELL. Yes, sir.

You think that represents the consensus of opinion of the gentlemen to whom you have talked from management in various parts of the country, is that correct?

Mr. YOUNG. I do.

Senator DONNELL. In your prepared statement you refer to the National Labor Relations Board, and particularly with respect to the point of the separation of the prosecuting and judicial functions of that Board under the Taft-Hartley Act. At this time we have the prosecuting functions vested in the general counsel, who is separate from the Board in that respect.

We have the judicial functions, that is to say, the function of trying out and making a determination of the questions vested in the Board itself.

Would you tell us what is your opinion as to whether this present plan, that is, the one that is now in the Taft-Hartley bill, dividing these functions, should be maintained or whether we should go back to the Wagner Act, under which the two functions are combined within the Board.

Mr. YOUNG. It is my judgment——

Senator DONNELL. Or its agents.

Mr. YOUNG. It is my judgment that they should be kept separate.

Senator DONNELL. And for what reason is that your judgment?

Mr. YOUNG. Senator, this question, of course, is a legal one that has been handled by our legal department, and our experience—in my discussions with our legal department, I am advised that it is much better to keep the two separated than to have one board being both the judge and the prosecutor.

Senator DONNELL. Yes. In other words, Mr. Young, I take it that in the administration of all of our other affairs we have the prosecuting attorney, for instance, and we have a court separate from the prosecuting attorney. We do not have them joined together as one agency, and here, where we have a judicial function to be administered, and a prosecuting function, it would seem advisable, would it not, to separate those two functions, giving one to one official and the other to a board composed of other officials?

Mr. YOUNG. That is correct.

Senator DONNELL. That seems practical, and in compliance with our usual division of the prosecuting and judicial authority.

Mr. YOUNG. That is correct.

Senator DONNELL. You refer in your testimony which has been given to the intimidation and violence that have occurred in connection with the strike at your plants. Would you tell us just in a word something of what you have experienced in that regard?

Mr. YOUNG. Yes; I would be glad to.

We have, as I stated, three plants out on strike. We did have four plants out on strike. The international representative that the union sent in to help out the union side of this strike was imported from the west coast, from Mr. Bridges' organization, and all of our violence that has occurred at any of the plants has always occurred a day or two following his visit to that plant and talking with our employees who are picketing and are out on strike.

We have had mass picketing which made it necessary for us to get State injunctions to prevent mass picketing.

We have had the people who are on strike drag our assistant general superintendent out of his automobile and beat him up badly.

Senator DONNELL. Where did that take place?

Mr. YOUNG. At Columbus, Ohio.

Senator DONNELL. When was that?

Mr. YOUNG. That was 2 months ago.

Last week the striking people at that plant shot through the building where our men are at work six shots from within an eighth of a mile of the plant at midnight on Tuesday night of last week.

We have had our employees at Hillsboro, Ill., who have stated that they, the majority of them, want to go back to work, visited by the international officers and told if they continued to encourage the men to return to work, they were going to beat them up.

We had a foreman whom we sent from our Hillsboro plant over to Columbus, Ohio, to work over there. He is not connected with any union. He returned to Hillsboro to visit his family a week ago over the week end, and his wife and he were attacked as they were walking back to their home from a moving picture show about 8 o'clock in the evening. That is a week ago last Sunday.

At Metaline Falls, Wash., we have had men break into the homes of some of our employees and drag men from those places and take them over and put them in the city jail, which was not occupied, and the door was open. [Laughter.]

Senator DONNELL. Believing in the full utilization of public facilities. [Laughter.]

Mr. YOUNG. That is right. We have had quite a lot of violence in two of our places, and we have had threats at the other two.

Senator DONNELL. Mr. Young, do you regard it as advisable that there be either a strengthening of the processes of the local police officials, either State or in the locality, or if that shall fail, that there should be some Federal law to prevent mass picketing and violence of the type that you have described, which Federal law would be enforced by the Federal Government?

Mr. YOUNG. I think, Senator, that the State law should enforce those laws.

Senator DONNELL. Yes.

Mr. YOUNG. Rather than the Federal law.

Senator DONNELL. That is your opinion?

Mr. YOUNG. That is my opinion.

Senator DONNELL. Now, suppose that the State law is not properly enforced, or proves to be ineffective. Do you think that in industries relating to interstate commerce, public defense, and the like, there should be some Federal law enacted with respect to the preservation of order and insurance against a repetition of such violence as you have described?

Mr. YOUNG. If the public interests are involved in the situation, I think it should be Federal, but on industrial, I believe it is better to have the State.

Senator DONNELL. Yes. Well, I agree with you, I think that is exactly correct. The only question that I have in mind is that if the State either cannot or will not enforce, or the locality, the municipality, for illustration, will not or cannot enforce these law-abiding provisions, is it, in your judgment, advisable that the Federal Government, our Congress, should consider some Federal legislation designed to bring about the preservation of order and the absence of violence?

Mr. YOUNG. I think that would be advisable.

Senator DONNELL. Yes.

Mr. YOUNG. I want to say this, in answer to your question, Senator, that we have had in two States that we operate in, the finest type of consideration, I mean action in connection with both the courts and the officers that take care of those things.

In Ohio and in the State of Washington we have not had the same experience as far as police protection, as in the State of Illinois.

Senator DONNELL. Which State have you had the better experience in?

Mr. YOUNG. Ohio and Washington, we had very satisfactory experience in both of them.

Senator DONNELL. Thank you.

Have you had any instances in which the officers of your corporation or any of them were refused admittance to the plants?

Mr. YOUNG. We have.

Senator DONNELL. Would you tell us briefly what that experience has been?

Mr. YOUNG. At the Fairmont, Ill., plant, where they pulled the first strike, and I might say that is the center point where we have the Communist-dominated situation, and they control the other plants, we had at the start of the strike on August 13, they refused to let anyone go in and out of the plant.

Finally they consented to let certain members of our management enter, but they would not let certain supervisory employees in.

We are operating a plant where it is necessary to keep the furnaces fired 365 days in the year. We were forced to keep 28 men in our plant and feed them in the plant for almost 1 month before they could get out, be sent out of the plant, with the assurance that they could come back in when they once got out.

Senator DONNELL. Yes, sir.

Mr. YOUNG. I see that the time assigned to your examination has expired, and perhaps some of these other gentlemen on the Republican side would desire to interrogate you.



Senator SMITH. I would like to ask one question.

Senator DONNELL. Would you care to ask any questions?

Senator SMITH. I would like to ask Mr. Young one question. I note in your testimony the following:

I have spent approximately 45 years in the mining and smelting of zinc. I began work as a common laborer.

Now, I read that because I want to ask you whether your experience as a common laborer gave you a sympathetic interest on the worker's side in these problems, and whether you feel the testimony you have given with regard to the kind of legislation we need for the bettering of management-labor relations is in accord with your feeling which you must have that the worker has a place in this picture and should be protected in legitimate unionism?

Mr. YOUNG. Definitely, Senator.

Senator SMITH. That is what I want to bring out. I think you could be an expert witness from the worker's side because of the long life you have spent in dealing with both sides of these questions.

Mr. YOUNG. I started in my first job in mining in the feeding of the crusher with a long-handled shovel at 17½ cents an hour.

I started in with a company—I went with a company at \$60 a month in the office. I have the greatest sympathy for the employees and for the working man.

We have never had in our company strikes at any plant where I was located excepting in 1915, when we had a general strike in the district, and then, after the NRA came in at our Tennessee operation where I was located for some 11 years.

We have the finest type of relationship. We have yet at all of our plants, excepting the one that are dominated by this Communist leadership.

Senator SMITH. Well, would you agree with me, then, that it is most unfortunate that there seems to be a feeling getting around that business is some terrible ogre that is grinding down the poor workingman, or do you think it is possible for us to have friendly, partnership management-labor relations that can be lifted out of the chaos, that can give us a statesmanlike approach to this and not the division of classes which is attempted by some of the extremists in arguing their points?

Mr. YOUNG. Senator, there has been a definite progress made in the last 2 years in the relationship between management and labor. You take the situation—

Senator SMITH. Do you think the Taft-Hartley Act has been helpful in that?

Mr. YOUNG. Very helpful. We can sit down now and talk to our men, not wondering whether we are going to be charged with an unfair labor practice. We can write to our men.

After this new law was passed we did write to our men. We wrote to our men and gave them a copy of the poll that was made in 1947, showing just how they felt on each provision, and we stated that we felt that this legislation made it possible for management and labor to improve their relationship, and I would say that it has improved at our plants, excepting in those that are dominated by this Communist element.

Senator SMITH. You think that is the chief cause of the trouble in your particular industry?

Mr. YOUNG. I know definitely it is.

Senator SMITH. Yes.

Mr. YOUNG. It is the only cause. You take wages which have been advanced materially. If you would be interested, we have made fourth round of increases at three of our plants that are operating within the last few months.

Senator SMITH. And you think those changes can be brought about and the reform can be brought about by the interested cooperation of management and labor, where there is not stirred up this attempted feeling of warfare, which, to my mind, is so deplorable at this time?

Mr. YOUNG. I know definitely that the relationship can again be established on the basis that it was up until we had some unfortunate things happen.

Senator SMITH. Thank you very much.

The CHAIRMAN. Senator Taft.

Senator TAFT. No questions.

The CHAIRMAN. Senator Aiken.

Senator AIKEN. I would like to ask Mr. Young if the granting of the fourth round of wage increases means high prices for the lead and zinc.

Mr. YOUNG. No. No; the prices went ahead of the increase.

Senator AIKEN. You mean the law of supply and demand took care of the price situation?

Mr. YOUNG. Yes. I would like to explain that to you.

In Bartlesville, Okla., the National Zinc Co. has a contract with their union that if they could not agree on wages, that it would be submitted to an arbitration committee to determine the wage, and when the price of zinc has been advanced, if the company would not give an increase, they would go to arbitration; and each time the arbitrators have increased wages. We, being competitors have met that situation.

Senator AIKEN. Well, in a way, you are tying wage to price, then.

Mr. YOUNG. In our industry, Senator, prior to the time we had any legislation, wages automatically went up and down with the price of the product. For each advance of \$5 or whatever might be agreed upon, we increased wages so much an hour, and when the price went down, we reduced wages.

Senator AIKEN. Is that one reason for the generally satisfactory conditions that prevailed in your labor situation?

Mr. YOUNG. I could not answer whether it is or not.

Senator AIKEN. I say generally. You said there were two plants or mines which you had where you had trouble.

Mr. YOUNG. You mean today?

Senator AIKEN. Yes.

Mr. YOUNG. No; we have had—now, you take in Tennessee where we have operated since 1914, we have about 700 employees down there, and we have just the finest type of relations.

In the Panhandle of Texas we have the finest type of relations. At our Monsanto, Ill., plant we have the finest type of relations. That is only 6 miles from the place where we have this bad strike. It has been the policy of our management to sit down with our men and try to work out our problems.

When our competitors have increased wages or when industry around us has increased wages, we have given that considerable weight, even though the price of our product has not always gone up.

Senator AIKEN. But you say, as a rule, when the price of your product goes up, the pay of your men goes up.

Mr. YOUNG. That is right, in the tri-State district where I was located a number of years, that is, Missouri, Kansas, and Oklahoma, the price and wage level went up and down together—the wage level went up and down with the price of the product.

Senator AIKEN. Then, in your industry the increase in wages or an additional round of increase in wages is the effect rather than the cause.

Mr. YOUNG. Well, that policy of increasing and decreasing prices, after the union came in, that was put out. They did not want that in.

Senator AIKEN. I see.

I am using too much time, Mr. Chairman, and I will not ask any more questions.

The CHAIRMAN. Senator Murray.

Senator MURRAY. Mr. Young, aside from the infiltration of communism into these unions, you have no ill-feeling toward unionism in itself, have you?

Mr. YOUNG. I do not.

Senator MURRAY. Did your corporation accept the Wagner Act that was enacted, and did you feel that that was a step in the right direction?

Mr. YOUNG. I did not.

Senator MURRAY. You did not?

Mr. YOUNG. No; I did not.

Senator MURRAY. Your organization opposed the Wagner Act, and representatives of your organization appeared and testified against it, did they not?

Mr. YOUNG. We have always felt, Senator, that the Wagner Act was a one-way street. We have always felt that it was not properly drawn up so that both sides have the same rights. In other words, any legislation that makes it impossible for one side to talk frankly with the other side, I think, is not for the best interests of the country, or for promoting good labor relations.

Senator MURRAY. But you did not agree to the collective-bargaining program that the act sought to put into effect. You thought that there should not be any union that would have the exclusive right of representing the employees, but that individuals should have equal rights, and that there should be no exclusive bargaining powers given to representatives of the union?

Mr. YOUNG. May I explain to you that our company, following World War I, if you recall there was a wave of what we called "industrial democracy." We had at our principal mining operation, we had industrial democracy and we have always had that type of spirit in our organization until the Wagner Act became operative.

I will say until the NRA became operative and came in, and at that time when we were in the midst of the depression, everybody was suffering, our laboring men were suffering along with the industry, and I would say, I want to be perfectly frank with you, at one time I was against unionism.

Senator MURRAY. Yes.

Mr. YOUNG. Because I do not think that—I thought this: I thought each man should be allowed to speak for himself.

Senator MURRAY. Yes.



Mr. YOUNG. That is what I thought.

Senator MURRAY. And the representative of the American Mining Congress, Mr. Donald Callahan, appeared before the Congress and opposed the Wagner Labor Relations Act, and I would like to quote some of his statements. He says:

We believe that labor should be given the right to representation in collective bargaining by those of its own selection; that the plan of proportionate representation of labor in any industry should be recognized; and that the right of the individual, not a member of a labor organization, to conduct bargaining by means of his own choice, shall not be restricted or abridged.

That was the attitude of the Mining Congress at that time when the Wagner Labor Relations Act was put into effect: is that true?

Mr. YOUNG. If that is from his statement, it is true, Senator.

Senator MURRAY. Mr. Callahan, on behalf of the Mining Congress, proposed certain things. He was against the passage of the bill, and he gave, among other reasons, the following:

Under the provisions of this bill there will be no company unions and every liberty and opportunity will be given to paid organizers of federated labor to press into the ranks of their organization all employees in the Nation.

The Mining Congress offered no amendments to cure the alleged defects in the bill. That was the attitude of the American Mining Congress at the time that legislation was being enacted. Is that true, Mr. Young?

Mr. YOUNG. Yes, sir.

Senator MURRAY. I do not wish to take up the time of the witness in any lengthy cross-examination, but I have here some excerpts from the La Follette committee hearings on this subject, and I would like to have this material put in the record.

The CHAIRMAN. Without objection, it will be included in the record. (Senator Murray submitted the following:)

*Howard I. Young*

President, since 1930, of the American Zinc, Lead & Smelting Co.

Other positions: Director and president, American Mining Congress; director and president, American Zinc Institute; director, Southwestern Bell Telephone Co., Baltimore & Ohio Railroad, Mississippi Valley Trust Co., Scullin Steel, Associated Industries of Missouri, Southern States Industrial Council.

American Zinc, Lead & Smelting has mines in Missouri, Oklahoma, Tennessee, Colorado, and Washington and smelters in Ohio, Illinois, and Arkansas. Employs 2,500 to 3,000.

Has dealt with unions since 1934.

La Follette committee hearings (Senate Committee on Education and Labor, 75th Cong.). Violations of Free Speech and Rights of Labor, vol. 8, pp. 3159, 3160, exhibits 1046-M and 1046-M-1, consist of a letter dated June 16, 1936, of the Bergoff Industrial Service soliciting patronage and listing American Zinc, Lead & Smelting as a client and a reference.

The letter (exhibit 1046-M) is as follows:

BERGOFF INDUSTRIAL SERVICE, INC.,

*New York, June 16, 1936.*

Mr. SHANNON,

*General Manager, RCA Manufacturing Co., Camden, N. J.*

DEAR SIR: At the direction of Mr. E. T. Cunningham, we are contacting you relative your present condition in Camden.

Enclosed list of references containing thereon the names of some of those corporations that have availed themselves of our service.

Very truly yours,

BERGOFF INDUSTRIAL SERVICE.

By W. HOLDER, *Manager.*

The "list of references" referred to in the above letter is included in exhibit 1046-M-1, as follows:

"When trouble threatens, call Bergoff Industrial Service, Inc., 551 Fifth Avenue, New York, telephone Murray Hill 3-5860.

"The agitator, either actuated by selfish motives, or totally ignorant of economic conditions, is not only a menace to industry, but the influence he exercises is usually inimical to the best interests of his fellow workers.

"Our propaganda department was organized to combat this evil—to prevent strikes, with the attendant curtailment or complete stoppage of pay rolls, frequently affecting the well-being of a whole community.

"The personnel of this department is composed of men possessing natural leadership qualifications, combining a knowledge of psychology and unusual persuasive powers.

"Their efforts are devoted to prevention of strife and trouble and the promotion of constructive work.

"Costs little—saves much.

"*Emergency.*—This department is equipped to supply all classes of work people to keep the wheels of industry moving when a peaceful settlement cannot be effected.

"*Protection.*—These men are specially qualified by military or police experience for the protection of life or property and the enforcement of law and order. Established 1900.

"*References.*—American Zinc, Lead & Smelting Co., St. Louis, Mo."

In 1947 the union had obtained the following degree of union security: In two plants the company had agreed to union shop provisions; in the remaining plants maintenance of membership clauses were made effective by National War Labor Board orders (House Hearings on Amendments to National Labor Relations Act, 1947, p. 1223).

Company policies prior to union organization: (a) Hours of work—8 or 9 a day, and 6 days a week depending upon State laws; (b) vacations—until 1939, only for some salaried employees; (c) life insurance—employee participation.

#### TESTIMONY BEFORE HOUSE HEARINGS ON AMENDMENTS TO NATIONAL LABOR RELATIONS ACT, 1947

(a) Page 1214, cited lack of hostility of company toward unions; absence of any charge of unfair labor practice by employees.

(b) Page 1214, stated, "I do not believe that legislation can produce good employee relations."

(c) Pages 1215-1218, supported applications of antitrust laws to industry-wide bargaining.

(d) Pages 1218-1220, supported stringent penalties against union "irresponsibility."

(e) Pages 1221-1222, outlawing of illegal picketing.

(f) Pages 1222-1224, "In order to protect the right to work, it is not only necessary to outlaw the closed shop, but, in my judgment, all forms of so-called union security, namely, closed shop, union shop, and maintenance of membership which makes a man's job dependent upon the whims of a few labor leaders."

(g) Freedom of speech.

(h) Supervisory professional and administrative employees.

(i) Welfare funds.

#### LABOR RELATIONS UNDER TAFT-HARTLEY ACT

Newspaper accounts indicate following work stoppages involving operations of American Zinc, Lead & Smelting Co.: (a) Mining operations in State of Washington—began on July 1, 1948; (b) smelting operations in Illinois and Ohio—began on August 13, 1948.

The newspaper reports on these stoppages indicate that the company has refused to bargain with the union unless the union officials file non-Communist affidavits. There is no information regarding the termination dates, if any, of the work stoppages.

American Mining Congress—affiliated with the NAM through the National Industrial Council (Report No. 6, pt. 6, p. 261 *idem*). Many of its members are also members of the NAM.

In 1935, Mr. Donald Callahan, representing the American Mining Congress, appeared before this committee with the following resolution:

"We believe that labor should be given the right to representation in collective bargaining by those of its own selection; that the plan of proportionate representations of labor in any industry should be recognized; and that the right of the individual, not a member of a labor organization, to conduct bargaining by means of his own choice, shall not be restricted or abridged. We condemn any policy which shall constitute any labor organization, national or international, the sole representative of all those employed within an industry.

"Employees who desire to work should be fully protected by the police powers of constituted government and mob law should not be tolerated.

"We endorse the principle that every organization of employers and employees shall be made equally subject to public authority, legally answerable for its own conduct or that of its agents, and equally subject to judicial remedy."

Mr. Callahan, on behalf of the mining congress, protested against the passage of the bill, because, among other reasons, "under the provisions of this bill there will be no company unions and \* \* \* every liberty and opportunity will be given to paid organizers of federated labor to press into the ranks of their organization all employees in the Nation." The mining congress offered no amendments to cure the alleged defects in the bill (pt. 3, pp. 614-614, hearings on S. 1958, 74th Cong., 1st sess.).

Senator DONNELL. Would the Senator have objection to having Mr. Young answer what his present opinion is in regard to having labor unions and having labor unions conduct collective bargaining?

Senator MURRAY. I have no objection.

Mr. YOUNG. I am in favor of unions. I would much rather have unions than not today. I said a while ago that I at one time was against unionism. I thought each man should have the opportunity to come in and talk for himself.

In our industrial democracy set-up they had committees which represented them, and those committees represented all the men. That industrial democracy was done away with at the men's own request, with the understanding that any man could come in through the front door and talk to any of our management or anyone they wanted to, on anything they wanted to talk about.

But now, we have an entirely different set-up and I am in favor of unions that are properly managed.

Senator MURRAY. And there is a widespread feeling in the country among some management that the union system in this country is beneficial to the country, and they have been seeking to bring about better relations between their corporations and the unions, and they have succeeded very well in many corporations, is that not true?

Mr. YOUNG. That is true.

Senator MURRAY. I understand some of the larger corporations of the country, as a result of their efforts along such lines, have brought about such satisfactory conditions that they have not had strikes in the last 40 years.

I understand that is one of the claims made by the Standard Oil Co. of New Jersey, for instance, that they have not had a strike in their organization now for 40 years, and the relationship of the union members is entirely satisfactory.

Have you heard anything about that?

Mr. YOUNG. Yes; we have.

Senator SMITH. Mr. Chairman, I might suggest to Senator Murray, that in our textile industries in New Jersey we have not had a strike in 26 years, to my certain knowledge.

Senator MURRAY. Yes.



Mr. YOUNG. I might say, Senator, that we operated for 22 years without a strike at one of our plants. We have never had strikes until the last few years.

Senator MURRAY. So, you feel that it is very desirable that there should be an effort on the part of industry, of big corporations, to try to bring about a better understanding between management and employees to the end that we may have industrial peace in this country?

Mr. YOUNG. Definitely, I do; and I believe this, Senator: I think that if the unions could keep out of their ranks the radical un-American ideas, that we would definitely develop that quite rapidly under the laws that we have today.

Senator MURRAY. I agree with you on that, and do you not think that the labor organizations of the country are patriotic and are making a very serious effort to eliminate communism from their ranks? Do you not believe that?

Mr. YOUNG. I do.

Senator MURRAY. Do you think they are having great success in their efforts?

Mr. YOUNG. Well, as evidence, you take three of our plants have withdrawn from the Communist-dominated organization, and have set up, joined another one, in the same general CIO organization, but it is not dominated by Communists.

Senator MURRAY. You believe that these labor organizations should be given every encouragement and every assistance in meeting this problem of communism because if this country is to be saved from communism, it is going to be saved from communism by the working people of the country. Do you not believe that the labor organizations of the country are a great bulwark against communism, and if given the proper assistance and encouragement and help in this matter they will make great headway in preventing communism in this country?

Mr. YOUNG. I believe, Senator, that there is some responsibility on the part of management of helping to clean that up, too; and I will tell you, when you consider the fact that there are two or three organizations which are notoriously dominated by Communistic influences but so far they have not done anything to clean them out, they have not done anything to clean them up, and they are gradually ruining the industry in which they are being employed.

Senator MURRAY. Well, you have read statements made by men such as Philip Murray and Mr. Reuther of the CIO, and William Green, and other labor leaders of that kind, and do you not believe that they are making a very serious effort and devoting their energies wholeheartedly to this problem of preventing communism from developing in this country?

Mr. YOUNG. According to their statements they are.

Senator MURRAY. Do you not believe they are?

Mr. YOUNG. With the way they act on some of them, I cannot. Here is what they tell you, Senator, if you talk to one of their men about the situation. They say, "Well, each one of these units is governing; they are self-governing."

In other words, if you have the mine, mill and smeltermen, they have their own group of officers, and they run their organization.

We have the CIO Gas and Coke, and then they run their organization. We have the CIO Shipbuilders, and I want to tell you that there is just as much difference between negotiating with the representatives

of the shipbuilders and the mine, mill and smeltermen as there is between night and day.

Senator MURRAY. Well, my experience and understanding of the problem is that the corporations of the country have not helped in the early periods of these labor organizations to clean up their organizations and to make them effective and efficient.

They have not given them the complete assistance, you see, that they should have. They have opposed organized labor in many sections of the country, and it is only in recent years that management is coming to the realization that they must try to make this system work.

The only way that they can do it by cooperating with the unions is trying to assist them in developing strong unions.

Mr. YOUNG. Well, as a matter of fact, Senator—I beg pardon.

Senator TAFT. May I interrupt just for one sentence? Of course, if the employer undertook to go into a union and help them get rid of a Communist officer, he would be liable for an unfair labor practice, would he not, under the Wagner Act?

Mr. YOUNG. I was just going to say, I testified down here 2 years ago. We had Communistic influences in our Fairmont organization back a number of years ago. We knew it.

But we could not rid ourselves of it until we had this present law.

Senator DONNELL. That is the Taft-Hartley law?

Mr. YOUNG. The Taft-Hartley law. I will tell you, Senator, that we would not take this position that we have taken with our employees at this plant if it had not been for the fact that we know definitely that that operation and other operations are going to be put out of business if they do not stop and if they continue to take charge of the things as they have with us.

During the war period, as you know, we were giving every possible leniency to get out production. We did not want any delays.

Before the war period we had certain people in our organization who were communistically inclined, who were preaching to the men against anything that the management proposed to do, to block in any way possible, to carry on efficient operation, but we knew from the experience of others, or at least we thought from the experience of others, if we tried to fire these people entirely on account of that attitude that we would be charged with an unfair labor practice, and would have to take them back on the job and pay them.

If you will look at the record you will see where this communistic crowd took out of our plant five men back long before the war, and these five men sued the union and sued these people, and they were awarded a judgment. These five men were talking about organizing a craft union; they were mechanics in our plant.

We knew we had that, but we had no way to cope with it. This present law, I think gives management the right, and management has some obligation in trying to promote better relationships. It has a tremendous obligation, and certainly I am one who subscribes to leaning over backward to do anything possible to bring about better relations.

Senator MURRAY. Well, it seems to me the failure occurred, when they enacted the Labor Relations Act, in not leaning over backward at that time to try to make the Wagner Act work, but the corporations, instead of doing that, regarded it as unconstitutional and in-

valid, and ignored it, and started this warfare with unions which continued right up almost until the war; then, as a result of the war, and the dislocations which came out of it, great dissatisfaction developed in the ranks of labor, and we had some strikes and other trouble there, and they immediately wanted to break up the unions entirely.

They started propaganda across the country to the effect that labor had the Commie monopoly, and it must be curbed, and it seemed to me that that is a very serious mistake in this country because if we are going to have labor peace in this country it must come through organized labor. There must be a better understanding between labor and management and a better spirit of cooperation between the two sides.

That is all I have to say.

Mr. YOUNG. I just want to say one thing, if I may, that in our industry, there have been no thoughts of anybody's trying to bust the unions that I know of.

Now, other industries I am not familiar with. I am not familiar with all the industries of the United States, but in our industry there has been an attitude of wanting to develop better relationships between management and the workmen.

Senator MURRAY. All right.

Senator PEPPER. Mr. Young, without in any sense intending to pry into your personal affairs, and with the understanding that you need not answer this if you do not want to, did you ever vote for President Roosevelt in any of the elections in which he was a candidate?

Mr. YOUNG. Just to clear your impression on that, I never voted for a Democratic President, my reason being that I am in favor of protection to the American workmen and the American industry, and have always been for protective tariffs in some respects, and I have never voted for a Democratic candidate for President of the United States.

Senator PEPPER. Did you ever vote for a Democrat running for any other office?

Mr. YOUNG. Yes; I have.

Senator PEPPER. Local offices?

Mr. YOUNG. I have a lot of good Democratic friends back in Missouri, and a lot of good Republican friends in Missouri, and I lived in Tennessee for 11 years, Senator, and I had a lot of good Democratic friends in the South, and I have yet.

Senator PEPPER. Mr. Young, have you appeared before a congressional committee at any time to testify for or against legislation?

Mr. YOUNG. I have. I appeared before the Senate committee in connection with the portal-to-portal proposition.

Senator PEPPER. What position did you take on that?

Mr. YOUNG. I took the position that the law should be passed—that there should be a law passed to eliminate the claims that were being made.

Our company alone was sued to the extent of \$6,800,000, which was equal or in excess of our total working capital.

Senator PEPPER. Were those suits based upon a decision of the United States Supreme Court as to what should be fairly called working time?

Mr. YOUNG. No; they were based on the decision, as they called it, in Michigan. I will not say whether it was—



Senator PEPPER. Was it the Supreme Court?

Mr. YOUNG. It was a court out there where they held that walking time and wash time and some other time should be considered working time.

Senator PEPPER. That was in a Federal court?

Mr. YOUNG. I would not be sure of that, Senator. I do not recall.

Senator PEPPER. Was the effect of your position to deny to the workers the right of recovery on those suits and to make the law clear that the wage-hour law would not allow those workers to recover the damages they sought or the alleged compensation they sought under those suits?

Mr. YOUNG. The effect of my testimony, Senator, was to familiarize the committee with the situation that affected our industry and our company and to ask that such legislation as the Congress thought necessary be passed to correct those claims.

Senator PEPPER. That is, to make it clear that the workers could not collect as wages for time spent in going to work and dressing and things like that, the points that were involved?

Mr. YOUNG. That is right.

Senator PEPPER. Now, any other appearances that you made before the Congress?

Mr. YOUNG. Yes; I appeared before the House committee when they were having hearings before the passage of the Taft-Hartley Act.

Senator PEPPER. Did you advocate the passage of the Taft-Hartley Act?

Mr. YOUNG. I advocated changes be made so that there was a balance between management and labor in connection with our labor-management relations.

Senator PEPPER. You mean what you regarded as a lack of balance?

Mr. YOUNG. That is right.

Senator PEPPER. Well, as a matter of fact, what was the lack of balance in the Wagner Act, Mr. Young?

Mr. YOUNG. As I stated awhile ago, Senator, we felt it was just a one-way street. We could not sit down and talk to our people. We could not write letters to our people without being fearful of being charged with unfair labor practices.

Senator PEPPER. You mean without fear of being charged with the violation of the prohibition against your attempting to influence—

Mr. YOUNG. That is right.

Senator PEPPER. Workers not to organize and choose their representatives?

Mr. YOUNG. That is right.

Senator PEPPER. And belong to labor unions. Well, Mr. Young, I notice often that the term "our workers" and "our people" creep into the testimony of executives in our big plants, and I notice oftentimes a feeling of sort of a paternal attitude that the executive feels that he has a right to talk to his workers somewhat like the parent talking to his children.

You recognize, of course, that you are, like every other American, a citizen of this country, and that you live in a country where we treat with equal dignity every individual, and that a worker is as much a sovereign American citizen as the president of the company or the President of the United States, do you not?

Mr. YOUNG. Surely. I am just one of the workers of our organization.

Senator PEPPER. I could not help noticing you spoke of wanting to reserve the right of management to write letters to "our workers," sit down and talk to "our workers."

I could not help but sort of detect it was the attitude of the father wanting to sit down and talk to his son and to his daughter, and to tell them, to explain to them what was best for them, notwithstanding the fact that the question might be their desire to organize themselves into a union and the like.

Did you ever talk to your workers about whether you thought it was best for them to join a union or not, write a letter to them about that subject.

Mr. YOUNG. I never did.

Senator PEPPER. You never discussed that with them?

Mr. YOUNG. No, sir.

Senator PEPPER. What did you talk to them about? What did you write letters to them about?

Mr. YOUNG. I did not write any letters while we had the Wagner Act.

Senator PEPPER. Since the Taft-Hartley law you have been talking to them?

Mr. YOUNG. That is right.

Senator PEPPER. Since the Taft-Hartley law you have felt free to talk to them?

Mr. YOUNG. That is right.

Senator PEPPER. And to write letters to them?

Mr. YOUNG. That is right.

Senator PEPPER. What did you talk to them about? What did you write to them about?

Mr. YOUNG. I wrote them a letter in October 1947, giving them the benefit of a survey that had been made and published in Look magazine. I wrote them about the law because I thought that it was a law that would promote better relationships between management and labor.

Senator PEPPER. You mean the Taft-Hartley law?

Mr. YOUNG. That is right.

Senator PEPPER. You wrote them in order to bring to their consciousness the blessings of the Taft-Hartley law?

Mr. YOUNG. I might say, Senator, if you have taken the time to read union papers that these men get all the time from the union, they were getting only data that said this was a slave-labor law.

Senator PEPPER. I see.

Mr. YOUNG. And I wrote them because I feel it is my responsibility to work with our employees. I am one of the employees. My success depends entirely on the work that we get out of our plant.

Senator PEPPER. You felt that it was your responsibility as an employer to see to it that they got the right information and that they were brought up right?

Mr. YOUNG. Well, I will put it this way. I do not mean to say that the other fellow is always wrong in that respect, but I do mean this: I defy anyone to show me where the Taft-Hartley law as yet has been made a slave-labor law, and I thought it was proper for our employees to know that the management did not consider it a slave-labor law,

that we considered it an opportunity to improve our relationships with our employees, and this Look magazine is not read by many of our employees.

Therefore, I wrote them a letter and attached to it a reprint of the A B C's of the Taft-Hartley law so they could read for themselves just what the Taft-Hartley law meant as an employer and as a worker, and I sent that to every employee of our company on October 8, 1947.

Senator PEPPER. Do you favor them with other advice?

Mr. YOUNG. We do when they come in and ask for it. We do this. We have a relationship with our employees, Senator. Very often they will come in and ask us for advice, helping them on buying homes, on buying small farms down in the South. A lot of our people, as you know—

Senator PEPPER. Just one big happy family?

Mr. YOUNG. Well, it used to be one big happy family and it is not so bad yet at some of our plants.

Senator PEPPER. When was that period when you say that you were one big happy family?

Mr. YOUNG. Well, sir, we had one big happy family up until 1935.

Senator PEPPER. That was when the Wagner Act was adopted, giving them the right to adopt their union?

Mr. YOUNG. No; it as not. It was before the Wagner Act, as I recall. It was after the NRA. A man went over to our employees and said, "Now, the administration expects you to do thus and so."

Senator PEPPER. You mean the Roosevelt administration?

Mr. YOUNG. Well, I said the administration.

Senator PEPPER. Well, you mean the NRA? You are probably referring to section 7, which I believe was the forerunner of the Wagner Act, where the right of the workers to join a union and choose their representatives to bargain with employers was first provided.

Mr. YOUNG. That is right.

Senator PEPPER. And beginning at that time you ceased to have the big happy family relationship as it had previously existed in your plant?

Mr. YOUNG. That is right.

Senator PEPPER. Well, now, Mr. Young, the La Follette committee, the so-called La Follette committee, of which the able chairman of this committee and the distinguished Senator from Wisconsin at that time were members, as you know made a thorough study, a study that revealed many shocking facts about relationships which existed between management and labor in certain places in the country. You are aware of that?

Mr. YOUNG. Yes.

Senator PEPPER. And let me state that I have before me what purports to be a copy of a letter dated June 16, 1936, written by the Bergoff Industrial Service, by W. Holder, manager. It is on the stationery, purported to be that of the Bergoff Industrial Service, Inc., established 1900, New York, 551 Fifth Avenue; Chicago, 20 East Jackson Boulevard.

This letter purports to be addressed to Mr. Shannon, general manager of RCA Manufacturing Co., Camden, N. J., and says:

DEAR SIR: At the direction of Mr. E. T. Cunningham, we are contacting you relative your present condition in Camden.



Enclosed list of references containing thereon the names of some of those corporations that have availed themselves of our service.

Very truly yours,

BERGOFF INDUSTRIAL SERVICE,  
By W. HOLDER, *Manager*.

Now the list of references referred to in the above letter is included in an exhibit to which I will call your attention in a minute, and this is some of the enclosure in the letter [reading]:

When trouble threatens, call Bergoff Industrial Service Inc., 551 Fifth Avenue, New York; telephone, Murray Hill 3-5860.

The agitator: Either actuated by selfish motives or totally ignorant of economic conditions, is not only a menace to industry, but the influence he exercises is usually inimical to the best interests of his fellow workers.

Our propaganda department was organized to combat this evil. To prevent strikes, with the attendant curtailment or complete stoppage of pay rolls, frequently affecting the well-being of a whole community.

The personnel of this department is composed of men possessing natural leadership qualifications, combining a knowledge of psychology and unusual persuasive powers.

Their efforts are devoted to prevention of strife and trouble and the promotion of constructive work.

Costs little—saves much.

Emergency: This department is equipped to supply all classes of work people to keep the wheels of industry moving when a peaceful settlement cannot be effected.

They could not be referring to strikebreakers, I do not suppose [reading]:

Protection: These men are specially qualified by military or police experience for the protection of life or property and the enforcement of law and order. Established 1900.

References: American Zinc, Lead & Smelting Co., St. Louis, Mo.

Was that your company they gave as reference?

Mr. YOUNG. I imagine it was.

Senator PEPPER. Evidently they thought you were acquainted with their services and felt free to give you as reference to those who might need their services.

Mr. YOUNG. I think I could explain if you would permit me. In the twenties at the time that I was general superintendent of our mines, they had a strike at one of their smelters and I think that they probably used some of their men as guards in the plant.

Senator PEPPER. Some of the men that had the "unusual persuasive powers"?

Mr. YOUNG. No.

Senator PEPPER. Or maybe some of the propaganda department?

Mr. YOUNG. I think they employed guards. I had nothing to do with that. Mr. H. S. Kimball was president of our company at that time.

Senator PEPPER. Well, now, I am not sure whether this testimony refers to your testimony or not. Did you testify before the House on amendments to the National Labor Relations Act in 1947?

Mr. YOUNG. Yes, sir.

Senator PEPPER. Did you make this statement in your testimony at pages 1222 to 1224 of those hearings:

In order to protect the right to work, it is not only necessary to outlaw the closed shop but in my opinion all forms of so-called union security, namely, closed shop, union shop, and maintenance of membership which makes a man's job dependent upon the whims of a few labor leaders.

Did you use those words?

Mr. YOUNG. If you took that from the record, I did.

Senator PEPPER. It purports to be a quotation of your testimony before that committee. Do you subscribe to those principles?

Mr. YOUNG. I do not today.

Senator PEPPER. You have changed your mind on that since 1947?

Mr. YOUNG. I have as far as the union shop is concerned. Our experience has been entirely different.

Senator PEPPER. You now advocate the union shop?

Mr. YOUNG. Yes, sir.

Senator PEPPER. As a matter of fact, Mr. Young, have not a lot of industrial executives changed their minds about unions altogether since they so bitterly fought the enactment of the Wagner Act and since they so strenuously contested its constitutionality after its passage?

Mr. YOUNG. I think so, Senator. We are going from year to year into a different kind of national and world economy, and I will tell you frankly I have changed my mind on a lot of things in the last 20 years.

Senator PEPPER. Well, that is progress.

Mr. YOUNG. Certain fundamental principles I have not changed on, but I used to have the wrong idea of the effect of a union shop, and we tried it out and it has worked very satisfactorily.

Senator DONNELL. Has it worked satisfactorily under the Taft-Hartley Act?

Mr. YOUNG. The men vote; they have a chance to choose whether they want a union shop, and it has worked very well.

Senator PEPPER. Well, now, Mr. Young, what were your relations with your workers from the enactment of the Wagner Act up until the adoption of the Taft-Hartley law? Did you have any kind of union in your shop?

Mr. YOUNG. Yes.

Senator PEPPER. Did you have any strikes during that period?

Mr. YOUNG. Yes.

Senator PEPPER. That 12-year period?

Mr. YOUNG. Yes.

Senator PEPPER. How many strikes did you have?

Mr. YOUNG. I will be glad to supply you with the exact record. I could not answer. I have no information here but I will be very happy to answer that question.

Senator PEPPER. Well, can you give us some general impression as to when those strikes were?

Mr. YOUNG. Our most serious strike—let me go back. Was the Wagner Act in force in 1935?

The CHAIRMAN. In 1935.

Mr. YOUNG. We have had one strike in our Tennessee operation.

Senator PEPPER. In '35?

Mr. YOUNG. In 1935, as I recall, and we had several strikes at our Fairmont City, Ill., plant. We had one general strike—

Senator PEPPER. When were those?

Mr. YOUNG. Those were in various years all the way through. We had a lot of quicky strikes, and what I mean by quicky strikes we had poor leadership. Each year they progressively got more communistic domination.

Senator PEPPER. Did you have any strikes in 1940?

Mr. YOUNG. I want to say this. During the war period, Senator, we had no serious strikes; 1946 is when we had the most serious strike.

Senator PEPPER. I see; but during the war you did not have any serious strikes?

Mr. YOUNG. No.

Senator PEPPER. Well, these workers of yours were members of the CIO; were they not?

Mr. YOUNG. That is right.

Senator PEPPER. And the CIO, through its able leader, Mr. Philip Murray, had signed no-strike pledges as a general rule, I believe, as had the A. F. of L. and other labor unions?

Mr. YOUNG. That is right.

Senator PEPPER. They pretty well kept that pledge of no serious strikes during the war in your plant?

Mr. YOUNG. What we had were just quickies that lasted only a few days.

Senator PEPPER. Well, now, you say the first serious strikes occurred in 1946?

Mr. YOUNG. No; we had a serious strike in 1935.

Senator PEPPER. I mean after the war.

Mr. YOUNG. That is right.

Senator PEPPER. In 1946?

Mr. YOUNG. Late 1945, as I recall—

Senator PEPPER. I beg your pardon, I did not mean to interrupt you.

Mr. YOUNG. It started in November of 1945.

Senator PEPPER. In November 1945, after the war ended in August of 1945?

Mr. YOUNG. That is right.

Senator PEPPER. Now what was the issue in those strikes, Mr. Young?

Mr. YOUNG. The issue was wages.

Senator PEPPER. The same thing that Mr. Wilson said here a day or two ago was the issue in the strike of the General Electric employees. The issue was wages.

Mr. YOUNG. That is right.

Senator PEPPER. And how long did the strike last?

Mr. YOUNG. The strike lasted from the latter part of November until the early part of February.

Senator PEPPER. You felt that management could not pay the wages asked?

Mr. YOUNG. We knew definitely we could not under the prices that we had.

Senator PEPPER. Would you repeat what Mr. Wilson said? He felt with the Government holding prices down, that you did not feel you could not meet the wage demands of labor.

Mr. YOUNG. That is right.

Senator PEPPER. And the workers took the position they had to have more wages in order to meet their living demands, I suppose.

Mr. YOUNG. That is correct.

Senator PEPPER. So you had management taking one position, Government taking one position, and labor taking one position?

Mr. YOUNG. That is right.



Senator PEPPER. Well now, as a fair-minded American, you would not put all the blame for those strikes on labor, would you?

Mr. YOUNG. No. When you say "all of the blame on labor," no; I would not put all of the blame on labor.

Senator PEPPER. The Government's policy, you feel, had some influence on it in preventing the raising of prices?

Mr. YOUNG. Had a definite influence on it.

Senator PEPPER. And your conscientious belief that you could not—

Mr. YOUNG. That is right.

Senator PEPPER. Well, did you notice that strikes were pretty generally in progress over the country at that same time you were having your trouble?

Mr. YOUNG. That is right.

Senator PEPPER. Well, now, has the Taft-Hartley law, Mr. Young, provided any way by which such strikes over such disagreements could be prevented in the future?

Mr. YOUNG. Yes.

Senator PEPPER. Does it provide any way to settle a dispute over wages in a peaceful way so that there will not be a work stoppage?

Mr. YOUNG. It certainly does.

Senator PEPPER. Well, what provisions of the Taft-Hartley Act do that?

Mr. YOUNG. The men must take a secret vote before they can strike now and before they would take these quickies without any vote at all. A few people could pull a strike.

Senator PEPPER. Well, it has been my observation that in practically all the cases, in the overwhelming majority of the cases where any of these last offers had been submitted to the employees, that they voted with their representatives, their bargaining agents, and the result was the same as if they had not had these supplemental elections in the great overwhelming majority of the cases, so that even some advocates of the Taft-Hartley law said that they did not feel it necessary to continue in the Taft-Hartley Act that provision that the last offer made by management had to be submitted to the workers before they could strike.

Mr. YOUNG. Well, I think that it should be submitted to the workers.

Senator PEPPER. The reason I was interested in your bringing that out, I noticed in the preface that Senator Taft wrote to Mr. Hartley's book on labor policy—Mr. Hartley being Mr. Hartley of the famous team of Taft-Hartley, it is Taft to Hartley, or Hartley to Taft—Senator Taft says, in speaking about the subjects on page 10 of the foreword:

As Mr. Hartley points out, the problem of strikes was one of the issues of the 1946 election.

Now, the election came in November and your strike was in November, so there was a period of strikes along about the time of the November 1946 elections. I am continuing to quote now—

and revision of the labor laws was undertaken because of the Republican promises to correct fundamental injustices and oppressions and because of the public demand that strikes be curbed, together with the arbitrary power of labor leaders.

Now what I have been curious about is that it seems to me there was a demand that strikes be curbed and there was an idea in the public mind somehow that the Taft-Hartley law was going to curb strikes, and the figures I think show that most of the strikes were due to disputes such as yours was, over wages and working conditions; yet I have never found anything in the Taft-Hartley law that provided arbitration or provided any effective remedy to prevent work stoppages and, therefore, strikes. I am just wondering, therefore, if there has not been some misunderstanding about what the real effect of the Taft-Hartley law was and what it could accomplish.

Then we are told also that it was to prevent national emergencies, to prevent work stoppages of the mines, which would leave the Nation without coal and let its plants close down, people being thrown out of jobs, essential services stopped.

Yet we have had quite an animated controversy here in the committee as to whether there is any power to enjoin individual workers from stopping work even if their stoppage of work would endanger the national health and safety, and Senators who are the advocates of this law say that section 502, which says a man cannot be made to work against his will, only when consents, prevents an injunction from making the miners or the workers in any other essential industry keep on working if they choose to quit working, at least in concert with one another, so——

Senator DONNELL. Just a minute, Senator.

Senator PEPPER. Will the Senator excuse me a minute?

Senator DONNELL. There is an obvious incorrect statement made by the Senator. I know it was not intentional.

Senator PEPPER. I yield and will welcome any comments.

Senator DONNELL. The Senator has indicated the position has been taken that there is no efficacy or power in an injunction to stop the strike of workers operating in concert. That is the very thing that can be stopped, that is to say, labor organizations can be stopped, the concerted action of a strike as defined in the bill can be stopped, but no individual worker can be stopped as an individual, and he can leave and you can leave and I can leave, stop our work, but the concerted operation, known as the strike, can be stopped.

Senator PEPPER. Well, there is a difference of opinion as to whether or not a strike may be effectively prevented by the injunction. Some claim it can be and some claim it cannot be, at least. What I was getting to was that while there may have been misunderstandings on the part of labor about the Taft-Hartley law, I suspect that there are misunderstandings on the part of a lot of management and a lot of the public as to what the law can accomplish.

Now let us take, for example, the closed shop. If you cannot make men work individually without their consent, suppose a group of men who had a closed shop before tell their employer, "We will not work for you if you are going to employ nonunion men in this shop," and they quit, whether in concert or individually, and he employs these nonunion men and they just do not come back.

Now, under everybody's interpretation of the Taft-Hartley law, you cannot put them in jail for not coming back. You cannot make them work with these nonunion men, so all the closed shop does in many cases is to bring about black marketing and bootlegging where they

ignore the provision of the closed shop and the management and the workers go ahead working together.

In other cases a lot are bitterly contested and long drawn-out litigations such as in the ITU case, which causes trouble to everybody where there have been peaceful managements in the past, and in some instances the breaking of the union and the breaking of the happy relationships of long existence, so there may be misunderstandings as to the efficacy of the Taft-Hartley law, leading me to what I say in your testimony before the House on this subject, where I believe you said at page 1214: "I do not believe that legislation can produce good employee relationships."

Mr. YOUNG. I want to say this, Senator, in reply to your statement. I will talk just from my own experience.

On the union-shop proposition where we have been requested by the union in our negotiations prior to the Taft-Hartley law to put in the union shop, we have absolutely refused to do it because we did not think it was for the best interests of our employees, nor the company.

After the Taft-Hartley law became operative, while I personally still thought we should not do it, we put it up to the vote of our employees, and to my great surprise, and I will say also to our plant management's great surprise, when they took a secret ballot on it, over 90 percent of our men in each instance voted for the union shop, and if that is what the men want in that majority vote, that is what they should have.

Senator PEPPER. When was that election, Mr. Young?

Mr. YOUNG. That election was, as I recall—we had an election last year or in the latter part of 1947. We have had several elections. Of course we have some States—

Senator PEPPER. Whom did they choose as their bargaining agent?

Mr. YOUNG. They did not change their bargaining agent.

Senator PEPPER. Who was it?

Mr. YOUNG. The CIO, gas and coke division.

Senator PEPPER. Had there been any change up until the strike? Was there any change in that representation?

Mr. YOUNG. Yes. The CIO Mine, Mill, and Smelters represented that organization until 1946 or 1947. In early 1947 the membership at this plant decided to withdraw from the Mine, Mill, and Smelters and the withdrew and set up, joined the Gas and Coke Division. Then they asked for a union shop and I did not think we should give them a union shop, but we said, "O. K., we will have a vote," and over 90 percent of them voted for a union shop, and we have the finest type of a relationship.

Senator DOUGLAS. Senator Pepper, could I ask a question?

Senator PEPPER. I yield.

Senator DOUGLAS. Do I understand that now you favor the union shop, Mr. Young?

Mr. YOUNG. Here is what I favor, Senator. I favor whatever the majority of the men want. We have plants where we know the majority of the men want the union shop. We have other operations where the State laws prevent the union shop.

Senator DOUGLAS. I was going to say then you would be opposed, would you not, to State laws which forbid the union shop even though the majority of the men want it?

Mr. YOUNG. No, I would not.



Senator DOUGLAS. Well, how could you find out in those States—

Mr. YOUNG. You cannot find out. You have maintenance of membership. We could have maintenance of membership in these States.

Senator PEPPER. Do you have it?

Mr. YOUNG. We do, and we have voluntary check-off of dues where we can. Every man signs a card saying that he wants his dues taken off at the beginning of the contract, but he has the option at any time during the contract, if he decides he wants to get out of the union, he can do it.

(Subsequently Mr. Young addressed Senator Douglas as follows:)

AMERICAN ZINC, LEAD & SMELTING CO.,  
February 22, 1949.

HON. PAUL H. DOUGLAS,  
*Senate Office Building, Washington, D. C.*

DEAR SENATOR DOUGLAS: In my testimony before the Senate Labor Committee Saturday morning, February 19, you and Senator Pepper were questioning me about union security. In my answer to you I stated that in the States of Texas and Tennessee, where we operate, we could have maintenance of membership; and in answer to a question asked me by Senator Pepper I stated we did have maintenance of membership and the voluntary check-off of dues at our plants in those States. Upon my return here I find that the laws of Texas and Tennessee prohibit union shop and maintenance of membership. We do, however, have the voluntary check-off at all of our operations in those States.

The purpose of this letter is to correct the statement I made to you, which indicated that we did have maintenance of membership.

Very truly yours,

H. I. YOUNG, *President.*

Senator PEPPER. Well, that is under the Taft-Hartley law.

Senator DOUGLAS. May I follow this a little bit further? Would you favor having elections to determine whether or not men should have the union shop?

Mr. YOUNG. I do.

Senator DOUGLAS. Well, then, how can you favor State laws which forbid the union shop outright and do not permit elections?

Mr. YOUNG. Well, you say do I favor laws. Where we have those laws, of course we abide by them.

Senator PEPPER. But you could be a very powerful factor in proving these laws.

Mr. YOUNG. We have never taken any position on that, and we have never taken any position on State legislation on labor at all.

Senator DOUGLAS. You are here testifying on national legislation, and as I understand it you have now changed your mind on the union shop.

Mr. YOUNG. I have.

Senator DOUGLAS. You now believe it to be a good thing, and you would like to have the men have a chance to vote on it. I say you could do very valuable missionary work in Oklahoma, Kansas, and those other States.

Mr. YOUNG. I would say this, Senator, that our industrial relations in those States that have these laws is entirely satisfactory. It is also with the State of Illinois where we have this union shop at two of our plants.

Senator PEPPER. Are you finished, Senator?

Senator WITHERS. Senator, will you permit me to ask him a question?

Senator PEPPER. I yield.

Senator WITHERS. Mr. Young, you say the time has been when you opposed union labor; is that right, organized labor?

Mr. YOUNG. No; I said that I opposed a union shop.

Senator WITHERS. When did you first oppose union shop?

Mr. YOUNG. I thought a union shop was a sad thing up until the last 2 years.

Senator WITHERS. When did you begin thinking that?

Mr. YOUNG. When did I begin thinking that?

Senator WITHERS. Yes.

Mr. YOUNG. Well, Senator, I was raised and all my first 15 years of operation was in a district where we had no unions and we had no trouble to speak of, and I saw places where they had the few unions they had around the industry where they had lengthy strikes from time to time that we had been absolutely free of, and I thought that our situation was much better for both the employee and the employer than by having a union, which one of the principal jobs is each year to have some new demands that sometimes the employer cannot meet, and then you have strikes.

Senator WITHERS. Do you think the union shop has improved the condition of the laboring man financially; his standard of living?

Mr. YOUNG. Financially? Well, there is no question but that the rate of pay is higher on account of the unionization than it would have been without.

Senator WITHERS. They have been able to live in better homes and educate their children.

Mr. YOUNG. If they will spend their money for that; yes.

Senator WITHERS. Many of them do, though, do they not?

Mr. YOUNG. They do.

Senator WITHERS. So you have never been in favor of a union shop until the last few years?

Mr. YOUNG. Yes; but you are talking about unions in one case and union shop in the other, I understood.

Senator WITHERS. I talked about unions first and you brought me to union shops.

Mr. YOUNG. On the unions, I was making the statement. Now on union shop, to be perfectly honest with you, I had no contact with union shop until after 1935; no request for it.

Senator WITHERS. Since you have worked in mines yourself—how long did you labor in the mines?

Mr. YOUNG. I labored in the mines for about 6 months after I quit school; during the vacation, while I was in high school, I worked around the mines for about 3 years.

Senator WITHERS. Then what did you do?

Mr. YOUNG. I went into the office of a small mining company and I went from that into the office of a foundry company, and I went from there back into the mining industry in 1908.

Senator WITHERS. You did not do very much, did not spend very much of your time as a laborer.

Mr. YOUNG. I spent—I would not say much of my time; I spent all the time I was not in school for about 5 years.

Senator WITHERS. About 5 years?

Mr. YOUNG. Yes.

Senator WITHERS. And that 5 years taught you to be deeply in sympathy with union men. Since unions became established and

improved their working conditions and their opportunities, you have not favored unionism?

Mr. YOUNG. You said deeply in sympathy with unions?

Senator WITHERS. Labor, I will say.

Mr. YOUNG. Labor, yes. I knew nothing about unions.

Senator WITHERS. You do say they improved their working conditions, their compensation, and yet you have opposed—

Mr. YOUNG. No; I would not say they improved their working conditions in our industry. There had been a drive for a number of years before we had unions to improve working conditions from the standpoint of the safety and health of our men for a number of years.

Senator WITHERS. Well, what about compensation?

Mr. YOUNG. Compensation had been in effect for a number of years before we had unionization.

Senator WITHERS. What about the price of labor?

Mr. YOUNG. The price of labor was low. It was as high in our industry as any other.

Senator WITHERS. But it was low?

Mr. YOUNG. It was low. The price of our commodity was low.

Senator WITHERS. Then the industry was happy. Is that right? You say labor conditions were good. Prices of labor were low.

Mr. YOUNG. No; I do not know. I do not want to leave the impression with you or anybody else that I am happy when I see low wages. I would much prefer to see our present level of prices and wages so that the laboring men are making good money.

I certainly do not like to see a situation like we had in '32 and '33 when labor was working part time at a low wage and we were storing our material in order to give them jobs.

Senator WITHERS. But their increase in wages has been due to their own efforts in a great measure, has it not?

Mr. YOUNG. I would not say that, Senator. There have been wage increases in industry; wages that had no union. In our case I will tell you exactly what has happened.

Senator WITHERS. Have not your increases been due to the fact that they increased their own wages generally?

Mr. YOUNG. Our increases, all of them, have been on account of—no, the last one was not an increase in wages.

Senator WITHERS. Have you ever paid greater wages than the union received anywhere else?

Mr. YOUNG. We are doing it right now.

Senator WITHERS. Did you do it before you were unionized?

Mr. YOUNG. No; but we did this, Senator. I want to answer one question.

During World War I, in 1915, we paid a good deal more than the industry because we had our men on a piece-time basis, so to speak. In other words, for their increased effort they got a separate tonnage bonus and they made more than the average wage in all of our mining operations.

Senator PEPPER. Mr. Young, I want to conclude my questioning. I want to be clear about this.

At the time of the adoption of the Taft-Hartley law in mid-1947, did the International Union of Mine, Mill, and Smelter Workers represent the whole or any number of the workers in your plant?



Mr. YOUNG. They did not represent the whole in all of our plants.

Senator PEPPER. Did they represent a part?

Mr. YOUNG. That is right.

Senator PEPPER. Were there other unions that represented other workers besides the International—

Mr. YOUNG. In those plants, yes, sir; we had the CIO gas and coke in one plant.

Senator PEPPER. In one plant?

Mr. YOUNG. That is right.

Senator PEPPER. How many of your workers did the International Union of Mine, Mill, and Smelter Workers represent?

Mr. YOUNG. In number?

Senator PEPPER. Yes.

Mr. YOUNG. They represented over 2,000.

Senator PEPPER. Out of a total employment of how many?

Mr. YOUNG. At that time I should say they represented about 2,500 out of a total of 2,800.

Senator PEPPER. They represented, then, nearly all the workers in your plant?

Mr. YOUNG. That is right.

Senator PEPPER. Well, now, did you have a collective-bargaining contract with that union?

Mr. YOUNG. Yes.

Senator PEPPER. How long had that contract been in effect?

Mr. YOUNG. We had a contract from year to year since 1940 with the International.

Senator PEPPER. With that same union?

Mr. YOUNG. That is right.

Senator PEPPER. From 1940 up until the middle of 1947?

Mr. YOUNG. That is right.

Senator PEPPER. Well, now then, when the Taft-Hartley law was enacted, what happened?

Mr. YOUNG. We continued to have that.

Senator PEPPER. Continued the contract?

Mr. YOUNG. That is right.

Senator PEPPER. I thought you testified here a while ago that because the union leaders did not sign—you continued the contract?

Mr. YOUNG. The contract which existed.

Senator PEPPER. When did it run out?

Mr. YOUNG. It ran out on June 30 of last year.

Senator PEPPER. Of '48?

Mr. YOUNG. That is right.

Senator PEPPER. Then what happened?

Mr. YOUNG. Exactly what happened, we advised our union, the local union and the international, that we expected them to file the anti-Communist affidavit if we were to continue to have relations with them.

We stated to them, however, that every man could continue to work because we understood that they had the national policy that they would probably consider in September of 1948. They could continue to work without contract without any changes whatsoever in rates of pay, working conditions, overtime or anything else, and after they had had that convention that then we would talk it over again or to

continue it until the Supreme Court had decided on the constitutionality of this provision of the law.

Senator PEPPER. Well, did you mean by that that the individual workers could continue to work upon the same terms as were embodied previously in the contract, or did you mean that you would continue to regard the union as the bargaining agent for the workers and would, by common consent with the representatives, that is with the union, regard the old contract as continuing in effect?

Mr. YOUNG. No, we would continue to bargain with the same committee that we had been bargaining with for the whole union, but would work without a contract.

Senator PEPPER. Well, I thought you had stated earlier that you had declined to bargain with this union because the leaders would not sign this affidavit.

Mr. YOUNG. We declined to bargain for a new contract, but we would continue to work and bargain with their committee—when I say “bargain,” I mean continue the present wages and working conditions and all other provisions of the contract.

Senator PEPPER. But you would not bargain with that union which had been in existence and had been the representative of the workers for a new contract because they did not sign the anti-Communist affidavit, their leaders did not?

Mr. YOUNG. That is right.

Senator PEPPER. Well, now, did your lawyers advise you that the Taft-Hartley Act required you to adopt that course?

Mr. YOUNG. No, our lawyers advised us that we had that privilege to adopt that course, and that we could adopt that course if we saw fit.

Senator PEPPER. But is it not a fact that the Taft-Hartley law did not deny to an employer the right and the power to deal with the representatives of the workers, that is, the chosen union even though their leaders did not file anti-Communist affidavits, but simply denied that union the right of redress before the National Labor Relations Board?

Mr. YOUNG. That is correct.

Senator PEPPER. You could if you had wanted to?

Mr. YOUNG. That is right.

Senator PEPPER. You could have continued to bargain with that union and have entered into a new contract with them without violating any law?

Mr. YOUNG. Yes, sir; we could.

Senator PEPPER. All right. Did that union, when they asked you to bargain with them for a new contract, ask you to consider a provision in the new contract relative to health and welfare funds for the workers?

Mr. YOUNG. Well, we did not bargain with them.

Senator PEPPER. I know, but did they state to you any demands for health and welfare funds?

Mr. YOUNG. Yes. Let me answer you in this way. They had printed in their paper, the union paper, sometime in the early part of 1948 their general program that the international union had for various things, and it included some of those things, but I might say, Senator, that we have had requests for these various fringe items

that you speak of in our negotiations before, and we had told them we could not give them and why we could not give them.

Senator PEPPER. So you have not had, between management and workers in your plants, health and welfare clauses in contracts. You have not given the workers health and welfare benefits?

Mr. YOUNG. We have given them health and welfare benefits for years. In our mining operation at Tennessee where our principal operations are conducted, we have given them their health benefits since 1914. We have doctors and visiting nurses. We have employees' insurance that the company carries the greater part of to pay them when they lose time before the compensation date becomes effective, and we have insurance on every employee that pays him for an injury that he might get, a nonoccupational injury.

We have the finest type of insurance, and I might say, Senator, that we are carrying that insurance yet for every man in our three plants that are out on strike. We have not cancelled one item of insurance.

Senator PEPPER. I do not reconcile that with your previous answer that they had wanted to negotiate about health and welfare funds, and you had declined to.

Mr. YOUNG. No, I did not say that. I said it was published in their paper, the policy, and I know that they would have wanted to negotiate, but they did talk before, about a year before, about some of these various things, and we had a program that cost as much as we could afford to pay in our particular industry, and we told them so.

Senator PEPPER. Was there any provision in the contract which was in effect when the Taft-Harley law became effective relative to health and welfare funds? Was there any provision in the contract about health and welfare funds and benefits?

Mr. YOUNG. We have not that provision in any contract.

Senator PEPPER. You have not that provision in any contract, and you have not negotiated in the past upon that subject with them?

Mr. YOUNG. We have negotiated, but we declined to put it in.

Senator PEPPER. You declined to put it in. You gave them what you felt you could and should, but declined to put it into the contract and negotiate with the workers on the subject?

Mr. YOUNG. That is right. We gave that to them long before they had any contract.

Senator PEPPER. Do your workers get holidays?

Mr. YOUNG. Yes, sir.

Senator PEPPER. How many holidays a year do they get?

Mr. YOUNG. All men who work less than 5 years get 1 week's vacation, from 5 years to 15, 2 weeks, and over 15 years, 3 weeks.

Senator PEPPER. Is that paid-for time?

Mr. YOUNG. That is paid for.

Senator PEPPER. Well, was that in the bargaining contract you had with the union?

Mr. YOUNG. We have had that for some time.

Senator PEPPER. Was that in the contract?

Mr. YOUNG. Yes.

Senator PEPPER. That was not any subject of dispute then between the union and management?

Mr. YOUNG. No.

Senator PEPPER. Did they make any demand for more vacations than you had previously granted them in your subsequent negotiations?

Mr. YOUNG. Well, may I answer that in this way, that we have negotiated new contracts that expired at the same time with all of the CIO unions, and there has been no difference of opinion on the question of holidays or time paid for time not worked.

Senator PEPPER. Did this International CIO Union of Mine, Mill, and Smelter Workers agree in the last agreement you had with them on this matter of holidays?

Mr. YOUNG. They agreed on every phase of the contract that we had.

Senator PEPPER. And in the last negotiation did they make any demand for more holidays than they had previously been allowed?

Mr. YOUNG. Yes, they did.

Senator PEPPER. And you did not agree to that?

Mr. YOUNG. No. They asked for more than 3 weeks. As a matter of fact, just so there will be no misunderstanding, it is normal for them to ask for more than we finally agree upon. Senator, when they come in. That is a normal procedure of negotiations, but we settle on what seems to be fair.

Senator PEPPER. Well, what I was getting at, contemporaneously with your refusal to deal with this union, there was also a dispute between this union and management over health and welfare funds and over the holiday period that they were getting under their previous contract.

Mr. YOUNG. No, there was no dispute at all with this union on any question at the time we served notice that they must sign these anti-communistic affidavits.

Senator PEPPER. Well, at the time they asked for a new contract, were these subjects in dispute?

Mr. YOUNG. No. We had this: We had a provision in our contracts which we have had for years, that we must meet with them 60 days prior to the date of expiration of the contract, and open negotiations for a contract.

We served notice on them prior to that date that we would not negotiate with them unless they signed these anticommunistic affidavits.

Senator PEPPER. Well, now, Mr. Young, do you know whether or not the united steelworkers, the head of which is Mr. Philip Murray, signed these non-Communist affidavits?

Mr. YOUNG. No; he has not.

Senator PEPPER. Did the steel companies negotiate contracts with the steelworkers?

Mr. YOUNG. I believe—now I am not sure of this statement, but it is my understanding—that their contracts, a number of them at least, ran for 2 years, and that question has not been up for consideration.

Senator PEPPER. But you could have negotiated with these workers under the law if you had chosen to do so?

Mr. YOUNG. Yes. I will say this, Senator. If we had had the proper type of relationship, if we had not been convinced in our own minds that our men were being dominated by leaders who were communistically inclined, even though they might not have been members of the Communist Party, we would not have asked them to sign these affidavits—we would have gone ahead and negotiated.

We will negotiate with them today, they can start work tomorrow if they sign these affidavits, but I feel this strongly. I may be wrong, but I feel definitely that if we are going to keep our industry in healthy



shape, which is necessary to meet our national defense as well as our national economy on the proper basis, that it is a definite obligation for us to try to keep our labor group from under the influence of communism.

Senator PEPPER. Well, is it not also desirable to preserve in management in this country the finest fidelity to American principles and ideals?

Mr. YOUNG. Definitely so.

Senator PEPPER. The Taft-Hartley law does not require any affidavit from management of any kind, does it?

Mr. YOUNG. No, Senator; it does not.

Senator PEPPER. You think that management is all good and labor is so bad that we need to legislate Americanism into labor, and we do not need to put any requirements at all upon management?

Mr. YOUNG. No. I will tell you exactly what I think. I think there is a very small percentage of labor that is bad, but I do think that that small percentage that is bad is the militant end of labor and that they can dominate 100 for 1 or 500 for 1 those that are reasonable, thinking, fine, loyal American citizens.

I think the majority of management is honest and sincere and are good American citizens. We have some bad management; we have some bad labor situations.

Senator PEPPER. Exactly.

Mr. YOUNG. Unfortunately for us, we had some bad labor creep into our plant.

Senator PEPPER. That is exactly the point some of us want to emphasize, Mr. Young. There are some bad union people and there are some bad management people.

Mr. YOUNG. That is right.

Senator PEPPER. And yet the Taft-Hartley law comes along and requires an affidavit of noncommunism and fidelity to American principles from unions, and it does not do anything to the element you admit is bad in the category of management.

A group of people who stand convicted by the findings of the La Follette committee of having resorted to violence and intimidation and the most heinous forms of brutality and atrocity, they are not required to submit any kind of an affidavit or make any sort of a showing, so if you are going to get at the bad in one category, certainly fairness would demand, would it not, that you get at the other in some appropriate way?

Senator SMITH. Would the Senator yield?

Senator PEPPER. Let him answer the question.

Mr. YOUNG. I have stated I feel that the management should sign the affidavit.

Senator PEPPER. Not that affidavit, but an appropriate affidavit that would tend to curb the abuses of which some bad management has been giving. It is not communism, but some of them have other attitudes that are just as un-American as some of the bad groups in the labor categories.

Mr. YOUNG. I want to say this, Senator—

Senator DONNELL. Would Colonel Young just permit me for a moment—

Senator PEPPER. Let him finish.

Senator DONNELL. May I, Mr. Chairman?

Senator PEPPER. No, not until he is finished.

Senator DONNELL. I am asking the chairman of this committee for permission to put this previous statement of the witness into the record in regard to that. He has already testified:

Unless you can devise an even more effective means of ridding the labor movements of communism, I strongly urge to retain and strengthen the anti-Communist affidavit provisions of the present law. I think it would likewise be advisable to make these provisions apply to employers so as to eliminate the complaint that labor is being discriminated against.

Senator PEPPER. Senator, the witness is about to answer the question. We would have saved time probably if you allowed him to do it.

Senator DONNELL. He can answer it. He is amply able to. He has already made his position perfectly clear.

Senator PEPPER. It is not that you need an affidavit from management that they are not Communists; of course they are not, but some of them have indicated tactics something very much akin to fascism and whatever would be an appropriate affidavit to curb any un-American activities on their part, that is what we are talking about.

You do not answer the question when you just say you are now going to ask a fellow of the type of attitudes that were revealed in the La Follette committee investigation to sign a non-Communist affidavit. Of course he is not a Communist. Hitler was not a Communist, either, but I am speaking about an affidavit, properly couched, that will get at attitudes that are un-American on the part of management. The records of the La Follette committee are replete with the convictions of such attitudes.

Now what you, as I understood you to say very fairly, believe, if you are going to get at the bad element in labor, it is equally fair to get at the bad element in management, is it not, Mr. Young, and in an appropriate way?

Mr. YOUNG. Definitely. I want to say this, Mr. Senator, so that you fully understand our position. I personally, on this, tried to get the international officers of the union to state that if the Supreme Court, whatever the Supreme Court decided on this matter, we would both abide by it. There was no reason for them to pull out all of these 1,100 men just on account of this issue.

The vice president of this union stated to me, he said: "I do not know whether we will abide by the Supreme Court decision or not."

Senator DONNELL. What was his name, Colonel?

Mr. YOUNG. Reed Robinson.

Senator DONNELL. Is Mr. William Sentner in your union?

Mr. YOUNG. No; he is not.

The CHAIRMAN. Senator Taft had a question.

Senator PEPPER. Go ahead.

Senator TAFT. I will wait until Senator Pepper finishes.

Senator PEPPER. Mr. Young, you recognize that it was only natural, in view of the fact that you had yourself admitted that you formerly did not believe that unions were a good thing, and that you had opposed the Wagner Act, and that your company had opposed its effectiveness when it was once enacted, and where it appeared in the record that you had used some of these police organizations in respect to your employees, it was only natural to bring those up in con-

nection with your refusal to bargain with this union as to whether there was anything else in your attitude, any differences in your opinion over wages and hours, working conditions, health and welfare funds, holidays and that sort of thing that might have had some bearing upon your desire not to bargain. It might have been that you wanted to get rid of this union.

Mr. YOUNG. No.

Senator PEPPER. And I thought it was pertinent to inquire about your general attitude.

Mr. YOUNG. May I, Mr. Chairman, make just one statement to the Senator?

The CHAIRMAN. We will be glad to have it.

Mr. YOUNG. This union within the last 6 months got to a point where they were fining every man in their own organization that would work overtime.

We have an operation that is a 24-hour cycle, 7 days a week, where we employ 700 men, and we have 3 shifts. We have men who, on account of illness in their families, illness to themselves or some other reason, do not show up to work, could not, and it is necessary for their buddy, so to speak, on the other shift to work overtime. They put in regulations that they would fine a man for working overtime.

They were doing everything humanly possible to lay obstacles in the way of management. We could not have cleared it up had it not been for this provision in the law where we could have the opportunity to kick out that kind of domination.

Senator PEPPER. So it came very fortuitously. You wanted to get rid of these folks anyway, and you were glad that the Taft-Hartley affidavit was in there.

Mr. YOUNG. No; I do not want to get rid of any of our employees at all, but I do want to get rid of the domination of the international communistic leadership.

Senator DONNELL. Mr. Chairman, I would like permission to ask the pardon of the Senator from Florida for breaking in on him a few minutes ago.

Senator PEPPER. That is all right. The Senator from Missouri can do no wrong.

Senator TAFT. Mr. Chairman, the distinguished Senator from Florida likes to read from the foreword that I wrote to the Taft-Hartley book. I am very proud of that general statement and very glad to stand by it all, and I think it would do the committee good to have the whole thing inserted in the record at this point. It seems to me that is fair, and then everybody can refer to it. Would that be satisfactory?

Senator PEPPER. No objection at all.

The CHAIRMAN. It will be inserted.

(The foreword referred to is as follows:)

#### FOREWORD

When Mr. Hartley asked me to write a foreword for his new book on labor policy and the Taft-Hartley Act, I was delighted to do so for several reasons. I have come to have the highest regard for Mr. Hartley's ability, his knowledge of labor problems, and his intense sincerity in trying to solve those problems in the public interest. I was glad to have the opportunity of stating a few general principles which I believe should guide the Federal Government in dealing with labor-management relations.

Mr. Hartley discusses the reasons for, and the history of the passage of, the Taft-Hartley Act, as well as the general principles in which he believes. The reader will find both sections of his book interesting and provocative. The subject has been involved in such bitter controversy that few have sat down to consider the very serious problems we face in reconciling American principles of liberty and justice with the situation existing in a modern industrial state, particularly when large units develop employing hundreds of thousands of men who cannot retain any personal relationship with those who manage the business.

Mr. Hartley approaches the problem from the point of view of the House of Representatives and its committee, which prior to the Eightieth Congress had done more work than had the Senate, where every effort to amend the labor law was promptly suppressed as long as the Democrats retained control of the old Committee on Education and Labor. The new Senate Committee on Labor and Public Welfare, however, went promptly to work entirely independently of the House committee and developed its own bill which supplied the framework of the final act. There was certainly no antilabor bias in the Senate committee. Under rules of seniority and custom, it would have been impossible for Republican leaders in the Senate to create an antilabor committee if they had wished to do so, and there was no such wish.

As Mr. Hartley points out, the problem of strikes was one of the issues of the 1946 election, and revision of the labor laws was undertaken because of the Republican promises to correct fundamental injustices and oppressions, and because of the public demand that strikes be curbed together with the arbitrary power of labor leaders. The Case bill had been passed for these purposes by the Seventy-ninth Congress, and failed to become a law only because of the veto of President Truman. The Republicans promised the enactment of some law similar to that already passed. If they had not acted, they would have had no basis to appeal for the further confidence of the people in 1948.

In the Senate committee, I think every member of the committee introduced his own bill dealing with those phases of the labor problem in which he was most interested. We started out to deal particularly with the subjects covered in the Case bill of the previous year, but we discovered that a fundamental revision of the Wagner law was also essential. We conducted hearings for 6 weeks, with an opportunity for all to testify.

We employed two very able attorneys, Mr. Gerard D. Reilly, a former member of the National Labor Relations Board, and Mr. Tom Shroyer, a former general counsel for the Board in Ohio. Mr. Reilly had also been Solicitor for the Department of Labor for a number of years and certainly could not be accused of an antilabor bias. These gentlemen had expert knowledge of the inner workings of the Board and of the Wagner Act. They knew its faults and its merits. When the hearings were over, we directed them to prepare a bill covering the matters dealt with in the Case bill, and including also a correction of the various kinds of abuses shown in the testimony. After the first draft was prepared, the committee went over it section by section and made many changes, a number of which I did not personally approve. The committee finally approved the bill by a vote of 11 to 2, and I introduced it in the Senate in behalf of the committee. It was no more my bill than that of any member. It represented an expert job done by skilled attorneys and the committee itself, many of whose 13 members also had wide knowledge of labor relations.

In many respects the bill was similar to the House bill, because the Case bill provided a common guide, and studies of the Smith committee were used by both House and Senate. Certain abuses had become obvious to all. While we worked with the House to some extent, the connection was rather a loose one, and the job of putting the two bills together in conference was extremely difficult, but made easier by Mr. Hartley's willingness to sacrifice any personal advantage and any partiality for his own phraseology.

There is a suggestion in Mr. Hartley's book that various desirable changes were omitted from the Senate bill simply to get enough votes to pass the bill over the President's veto. Of course, this was a consideration, but fundamentally the differences with the House were brought about by differences of principle.

Originally the employer had had all of the advantages over his employees. He could deal with them one at a time and refuse to recognize the union. He could stand a strike in most cases better than they could. The courts would freely grant injunctions against any effective action by the unions. This unfair situation resulted in the enactment of the Clayton Act, the Norris-LaGuardia Act, and the Wagner Act. These laws, together with the consistently prolabor attitude of



the Executive, prolabor interpretations, and prolabor administration, more than redressed the balance, so that by 1946 employers, except for the largest concerns, were practically at the mercy of labor unions. As a practical matter, no legal remedy remained to the employer, the public, or even to the individual labor-union member, against the acts of labor-union leaders no matter how violent or arbitrary they might be.

The Taft-Hartley law was an attempt to restore some equality between employer and employee so that there might be free collective bargaining. There can be no such bargaining if one party feels that the Government and the courts will back up whatever unreasonable demand he may make. But it was equally important not to swing the pendulum back so far as to give the employer again an undue advantage. The laws in effect were infinitely complicated, and nearly all their provisions were intended to give labor an advantage. There were literally hundreds of proposals for amendments.

The Senate committee felt that our job was one of correcting inequalities in existing law, and that unless there was clearly a serious abuse to be remedied we had better not go too far into experimental fields. Undoubtedly, for instance, there is a serious problem of labor monopoly, but we left that the monopoly problem had not been satisfactorily solved with relation to industry, and that it required more study of both industrial and labor monopoly before satisfactory legislation could be adopted. We further felt that if an equal balance of power between employer and employee was restored, free collective bargaining itself might be so successful as to make further Government interference unnecessary.

In two other respects the philosophy of the Senate was somewhat different from that of the House. Many of us had been fighting against the attempt of government to extend its regulation of business, commerce, industry, and agriculture. We were opposed to the Federal Government taking over State functions. Therefore, in principle we were opposed to provisions of the House bill which attempted to regulate the internal affairs of labor unions. We did not wish to go beyond the requirement that full information regarding financial statements and other union matters be furnished to the members, as in the case of stockholders of corporations.

Again, in the matter of mass picketing and violence, these were clearly matters within the jurisdiction of the State and local governments. We hoped that the change in Federal policy providing for equality between unions and employers would encourage the States to do their jobs better than they have done them in the past. Furthermore, there is always a difficulty in bringing the Federal Government into the police field when there is no Federal police force. Our past experience with deputy marshals sworn in to deal with strikes has not been encouraging.

So also, the attempt to prohibit featherbedding requires an elaborate Federal investigation of conditions in each industry and the exercise by the Government of an expert opinion of the number of men required to do each job. The extreme case of paying men for doing nothing, made an unfair labor practice by the new law, can be more easily dealt with, but there are literally thousands of borderline cases different in every industry which would require a vast extension of Government regulation of labor and industry.

In general, however, the two Houses proceeded on the same basic theories and had no great difficulty in reaching an agreement. We agreed that labor-management relations should be based on free collective bargaining. Such bargaining cannot be free unless it is reasonably equal, and unless the parties have the right to strike or close down the plant in case agreement cannot be reached.

There is a public demand for compulsory arbitration and a complete prohibition of strikes. The people do not realize that this would mean in the last analysis a Government fixing of wages which would undoubtedly lead to Government price fixing, rationing, and detailed control of industry. We all felt that a free economy with free competition was the basic cause of American success in the past, and of the great production which has made possible a high standard of living and success in two wars. We did not believe that this system had to be abandoned for a regimented economy and the dead hand of government. It may be that in time the world will become so complicated that a free economy can no longer be maintained, but certainly it is the hope of Republicans that that time will never come.

In the second place, we accepted the basic principle of the Wagner Act, namely that the employer must deal with his men as one unit recognizing the representative chosen by a majority of those men without the influence or coercion of the employer. Without the requirement of union recognition the employer has

a great advantage in the present complex industrial world. On the other hand, to make this requirement effective there must be a serious limitation on the rights of the individual workman. He can no longer be free to deal directly with his employer.

As long as the employer is required to deal with the union, the labor leaders need have no real fear that they will lose their power. In our union-shop provisions, we tried to give each individual as much independence as possible consistent with the exclusive rights of the union to bargain. I think we reached a fair compromise, giving freedom to the individual without any substantial danger that the power of labor leaders can be broken down through an insistence on individual rights. Labor leaders will always be powerful, and should be, but their power should not be arbitrary and should be accompanied by responsibility for their acts commensurate with the power they enjoy.

Apparently, from one year's experience, we have been reasonably successful in restoring a balance of equality between union and employer. If that balance is right, we do not need much more legislation. Undoubtedly, there is a question whether the local unions in an industry should be permitted to join together and close down an entire industry which may be essential to national existence. I feel strongly that the employees of each employer should have the right to deal separately with that employer without having some outside party, such as the international union or its officers, designated by the Board as the union's exclusive bargaining agent. I do feel that no international union should have the right to prohibit the union representing the employees of one employer from closing a contract if it wishes to do so. This was the effect of the amendment which I sponsored in the Senate, and which was beaten by one vote.

I believe, however, that it will require considerably more study before we undertake to prohibit unions from joining together to deal with the employers of an entire industry, or part of an industry. The Sherman Act has not been satisfactory in limiting combinations between employers, and as far as I know there is no limit on employers consulting together as to the wages they will pay. The whole problem of monopoly should be further studied before action is taken.

In the last analysis, it is difficult indeed to prohibit by law a Nation-wide strike if all the men in the industry really want to strike. The leaders can be restrained. The strike can be discouraged. But no democracy can put a million men in jail or put them to work at the point of a gun. President Truman's proposal of drafting strikers into the Army is contrary to every principle of liberal government.

A Nation-wide strike, or a general strike, we hope can be avoided by reason and persuasion. It always has been in the past, because in the end it defeats its own purpose. When such a strike threatens the health or safety of the Nation, it takes on the aspects of a revolutionary movement. It should be dealt with by an emergency law giving the Government power to step in, call for volunteers, seize the necessary facilities for Government operation, seize the union offices and funds, and conduct the operation until reason returns to those responsible for the disaster. Such a law should be passed for the emergency only, and should not be part of any permanent system of labor-management relations. We hope it may never be necessary.

For the present, therefore, I think we had better get all the experience possible under the present law, and continue an impartial study of the problems which will gradually develop under that law. Such a study is being made by the joint committee, and will no doubt be continued in the next Congress. In that study, this book of Mr. Hartley's and the great work which he did during his years in Congress will always be of the greatest assistance and furnish sound guidance.

ROBERT A. TAFT.

Senator TAFT. Mr. Young, are you familiar with the book written by Ben Gitlow called *The Whole of Their Lives*?

Mr. YOUNG. No; I have not read it.

Senator TAFT. Do you know if Ben Gitlow was one of the Communist leaders during the twenties and twice candidate for Vice President on the Communist ticket in the United States?

Mr. YOUNG. Yes.

Senator TAFT. I want to read to you this statement, page 285:

Stalin wrote on the immediate tasks of the Communist Party the following: "If therefore the Communist parties wish to become mass parties capable of

setting revolution afoot, they must create intimate ties between themselves and the trade-unions and must find support in these industrial organizations."

Gitlow goes on:

Stalin is emphatic and categorically states that without the support of the unions, Communist parties cannot make a revolution. Getting control of the unions is therefore the No. 1 task of the Communist Party. By getting control of the unions the Communists mean getting control of the unions in the decisive, the basic industries of the land, the industries upon which the economic life of the country depends.

Do you agree with that general statement of the Communist policy?

Mr. YOUNG. I certainly do as far as the large branch of the International Mine, Mill and Smelters are concerned.

Senator TAFT. Do you not think that perhaps affords a reason why putting in a Communist oath for union leaders was given so much special consideration in 1947?

Mr. YOUNG. I do.

The CHAIRMAN. Are you all through, gentlemen?

Senator PEPPER. Mr. Chairman, I call attention to a statement made by Mr. Justice Douglas and reported in the New York Times of February 19 in which he says:

The fight against communism depends for its ultimate success on the people of the various nations, not on their Government. Thus, we must support those who represent democratic values and who have practical programs for political action.

In another place Mr. Justice Douglas of the Supreme Court said in a speech in Los Angeles, or prepared for delivery in Los Angeles:

The real victory over communism will be won in the factories and rice fields of the world rather than on the battlefields—

and I just want to be one, Mr. Young, to attest that there is not a more loyal, patriotic group of people in the world than the workers of America.

Mr. YOUNG. I agree with you.

Senator PEPPER. And that the workers of America do not need the Congress of the United States, even the authors of the Taft-Hartley bill, to protect them, nor even to protect their unions from domination by communism.

Mr. YOUNG. I want to say one thing in regard to that statement, Senator. If you will look up the record you will find that a large number of unions who have been protesting against this communistic domination, within the last year and a half have withdrawn from the communistic organizations and gone over with other CIO or A. F. of L. organizations that are not dominated by Communists.

This affidavit, in my judgment, is of as much value or more value to the employees than it is to the employers.

Senator PEPPER. Yes, Mr. Young, some of the union leaders have said that they have been impaired in their efforts to rid their unions of communism effectively by the provisions of the Taft-Hartley law.

One other thing. It is commented here about what communism has used as its method of propagation. I want to ask you, in any country where fascism got a foothold was it not management more than the workers who were the aides and allies and perpetrators of fascism?

Mr. YOUNG. Well, I cannot answer that question.

Senator PEPPER. Well, in Germany who was it that helped Hitler



put over fascism on the German people and crush the labor unions except the big management, big executives of Germany? Answer my question to the best of your ability.

Mr. YOUNG. Well, I will answer you in this way. The answer in that instance is, "Yes."

Senator PEPPER. Yes; so if you want to curb fascism, management would be a good field in which you would want to be on the alert; would it not?

Mr. YOUNG. Well, now, I want to tell you this, Senator. I know a very large number of people who are in management. Management did an outstanding job and showed their ability, their patriotism, and everything else during the war period. There is a very small percentage of management that you can put over on the Fascist side.

Senator PEPPER. I agree to that and there is also a small percentage of labor which you can put on the Communist side.

Mr. YOUNG. Management doesn't want to kill unions. Management does want unions to be managed by people who are American citizens and think the American way.

Senator PEPPER. And labor wants management to be of the same character.

Mr. YOUNG. I agree.

Senator DONNELL. There is one point that was suggested earlier, Colonel Young. I understand that, as indicated by you to Senator Murray in response to his inquiry, you also felt, and you so testified, that you felt, that the Wagner Act was a one-way street.

Mr. YOUNG. Yes.

Senator DONNELL. That is to say, it did not in any sense do anything except contain provisions with respect to management. It didn't have any corresponding provisions in regard to labor. Is that right?

Mr. YOUNG. In general; yes.

Senator DONNELL. To be perfectly frank with you, I think you said at one time you were against unions.

Mr. YOUNG. At one time I was.

Senator DONNELL. Were you referring in that latter statement to the period of the operation of the Wagner Act?

Mr. YOUNG. No; I am going way back on that.

Senator DONNELL. I will go back. Way back when you were quite a young man you were then opposed to unions?

Mr. YOUNG. That is right.

Senator DONNELL. When the Wagner Act came along, how did you feel about unions during the operation of that act?

Mr. YOUNG. Well, at the start of it when we had to deal on that basis, I adjusted or tried to adjust my ideas so as to get the maximum cooperation and change myself so as to try to do our best to deal with our employees on the basis that we were requested to deal with them under the Wagner Act.

Senator DONNELL. But you feel that the Wagner Act was deficient inasmuch as it did not have any regulations whatsoever that were applicable to labor; is that right?

Mr. YOUNG. That is right.

Senator DONNELL. Now today you have said you are in favor of unions, that you would much rather have them than not. What is the difference today as you have observed it in the set-up relative to unions



as compared with the period under the Wagner Act and the period under the Taft-Hartley Act? Have the union improved? Has there been a change for the better in the management of the unions during the Taft-Hartley Act as against during the period under the Wagner Act?

MR. YOUNG. In our experience they have improved materially and I say we have improved, too. I think we have improved. Most of us have employee relations departments, which we have set up, trying to get good men that would bring about a better relationship and working with the employee we have felt we could talk to the employee much more than we could under the old law.

SENATOR DONNELL. Much more than you could under the Wagner Act?

MR. YOUNG. Yes.

SENATOR DONNELL. Am I correct in understanding that you consider the general conditions in the unions, their set-up, the operation of the union has been improved under the Taft-Hartley Act?

MR. YOUNG. I do, definitely.

SENATOR DONNELL. And today you stated very clearly and unequivocally that you are in favor of unions, that you would much rather have them than not; am I correct?

MR. YOUNG. That is correct.

SENATOR DONNELL. Thank you.

THE CHAIRMAN. Thank you, Mr. Young.

MR. YOUNG. Thank you, Mr. Chairman.

SENATOR DONNELL. Thank you for coming and for your testimony, Mr. Young.

THE CHAIRMAN. Mr. Feinsinger. You understand the way in which we are operating, a 10-minute statement by you and insertion in the record of a formal statement if you have made such a statement, and then the various Senators will question you.

For the record, Mr. Feinsinger, will you state your name, what you represent, your address and anything you want to give about yourself?

**STATEMENT OF NATHAN P. FEINSINGER, PROFESSOR OF LAW,  
UNIVERSITY OF WISCONSIN**

DR. FEINSINGER. My name is Nathan P. Feinsinger and I am professor of law at the University of Wisconsin and have been since 1929. My residence is the Highlands, route 2, Old Middleton Road, Madison, Wis.

THE CHAIRMAN. Have you a formal statement?

DR. FEINSINGER. It is a semiformal statement, Mr. Chairman, and I am sorry that I don't have copies at this moment for the committee. They are being typed and I hope to have them ready before this session is over.

THE CHAIRMAN. That will be inserted.

DR. FEINSINGER. My background in labor-management relations is substantially as follows:

1937-39: Special assistant to the attorney general of Wisconsin, assigned as general counsel to the Wisconsin Labor Relations Board.

1941-42: Special agent, National Defense Mediation Board.

1943-46: With National War Labor Board successively as Chairman of Trucking Commission, associate general counsel, Director of Division of National Disputes, associate public member, public member.

1946: Chairman, fact-finding board in the steel dispute, appointed by the President. Incidentally, Mr. Chairman, in that Steel case one of my colleagues was the Honorable Jim Douglas, of Missouri, and another was the Honorable Roger McDonough, of Utah. I sat between them at that point with great pleasure.

Senator DONNELL. Judge Douglas is on the supreme court in Missouri.

Dr. FEINSINGER. Yes.

The CHAIRMAN. Roger McDonough was chief justice of the supreme court of Utah.

Dr. FEINSINGER. Yes; both of them very able men.

In 1946 I was chairman of the fact-finding board in Pacific Gas & Electric and Milwaukee Gas & Light disputes, appointed by the Secretary of Labor.

1946-47: Special representative of the Secretary of Labor on an ad hoc basis in various disputes including west coast shipping, Hawaiian sugar, pineapple, and longshore disputes.

1948: Chairman, board of inquiry in the meat-packing dispute, appointed by the President.

1949: Conciliator in two cases under Wisconsin public utility compulsory arbitration law.

I am currently one of three public advisers to the Labor-Management Advisory Committee of the Wisconsin Employment Relations Board. I think that outline of my background is sufficient.

I might add, Mr. Chairman, that I do not appear here by request or on my own motion. I appear here at the request of Senator Humphrey of Minnesota. His request was simply that I come down here, not to testify on any special section of the present law or any pending bills, but to relate my experiences in the field.

Senator DONNELL. Mr. Chairman, I observe that Senator Humphrey is not here at this moment. I am wondering if the witness would like to have some of us call him or let him know he is on the stand.

The CHAIRMAN. He is out of the city.

Senator DONNELL. Thank you.

Dr. FEINSINGER. Since 1937 I have been professor of law at the University of Wisconsin Law School, with various writings in the field. I have been arbitrator in various labor disputes in numerous industries, under contracts and in the making of contracts.

I will take the liberty of digressing from this semiformal statement, Mr. Chairman, with your permission.

I assume that all segments of our Congress, regardless of political differences, approach the problems of labor-management legislation with an open mind, and with a sincere desire to promote the public interest. I trust that the committee will receive my testimony as given in the same spirit.

I appear here simply to give you the benefit of my experience and observations, for what they may be worth, in the field of labor-management relations as a teacher, as a public administrative official at

both the Federal and State levels, as a mediator or conciliator, again at both levels, and as an arbitrator.

I think we are all agreed that the relationship between labor and management is one of the most delicate and complicated possible to imagine. It is complicated because at the same time that it involves the element of competition between the representatives of labor and management for an increasing share in the product of industry for the returns of that product, the success of each side depends entirely on the success of the other. You have a very unique form of cooperative competition involved in the relationship. For that reason, as well as for a number of others which are perfectly obvious, legislation in this vital field should follow a long-range national policy; it should be confined to basic problems; and it should provide practical measures.

I would state my conception of a sound labor policy for America as follows: As a Nation we are dedicated to the ideal of a free society, through which individual liberties may be exercised to the highest degree consistent with like liberties for others. We endorse a system of free enterprise because we believe it most conducive to a free society. We seek to promote industrial self-government through labor-management cooperation and self-discipline, because we believe it to be, in the long run, most consistent with a system of free enterprise. We adopt free, voluntary collective bargaining as the instrumentality best suited to the practice of industrial self-government, to the protection of the liberties of the individual worker; to the attainment of practical democracy within our modern industrial society; to the achievement of industrial peace; to the maintenance and increase of purchasing power; and through all these, to the safeguarding and advancement of the public interest.

If our national policy is to be effectuated through collective bargaining, we cannot simultaneously encourage a competing system of individual bargaining. If collective bargaining is to be free and voluntary, we cannot have governmental intervention, except to insure the conditions under which free bargaining can take place.

May I say parenthetically that I use the term "Government intervention" advisedly. I have observed that the term used is "Government interference" when it helps the other fellow and "Government protecting the public interest" when it helps our side.

If we are to have realistic bargaining, each side must be free in the final analysis to say "Yes" or "No," which means the right to strike and the right to lock-out if no agreement be reached. The exercise of the right to strike or to lock-out entails the risk of economic injury not only to the adversary but to neutrals. Such risks are inevitable in a democracy. Only a democracy can meet such risks, and take them in stride.

The policy considerations I have outlined run through every major Federal labor statute or regulation enacted in this country prior to 1947, regardless of which political party was in power at the time. These include the pronouncements of the War Labor Board in World War I; the Transportation Act of 1920, and the Railway Labor Act of 1926, as amended in 1934; the resolution establishing the (first) National Labor Relations Board in 1934; the Norris-LaGuardia Act of 1932; and the National Labor Relations (Wagner) Act of 1935.

Each of these steps was attacked as "one sided." The charge was

ill founded, if each step be viewed in proper perspective, namely, as designed (*a*) to correct an imbalance in bargaining power between the individual employee and the organized employer, and (*b*) to remove certain impediments to the establishment of the collective-bargaining process, specifically, first, interference with the process of organization for that purpose, and second, refusal to bargain. Viewed however in terms of mathematical equation—management has been restrained, therefore labor must be restrained—the charge was proper, as far as it went.

In the mass-production industries, the center of most of our most dramatic labor disputes, collective bargaining did not really get under way until 1937, when the Wagner Act was upheld as constitutional by the courts.

Between 1937 and 1941, the real ground work of collective bargaining was laid in these industries. With the advent of World War II, which produced the "no strike, no lock-out" agreement and wage and price stabilization, collective bargaining was virtually suspended.

Came VJ-day, and hosannas to "a return to free collective bargaining."

Then, in quick succession, came the failure of the labor-management conference to agree on a postwar program of cooperation: the ill-fated attempt to free wages while prices remained under control; the reconversion strikes of 1946; the search for a scapegoat for all our pent-up emotions; and the Labor-Management Relations (Taft-Hartley) Act of June 1947.

So much by way of background.

The Taft-Hartley Act was a product of anger, confusion, and compromise, but also of considerable idealism. It is this latter aspect which deserves serious consideration and which I wish to stress in my remaining remarks.

The best summary of the argument for the Taft-Hartley Act which I have seen is the newspaper advertisement recently published by the National Small Business Men's Association in the New York Times of Wednesday, February 2, 1949.

I have no doubt that not only the average small-business man but a great many other people sincerely believe that the act, as the advertisement asserts, has accomplished a good deal for the individual worker, union or nonunion; for the employer of union or nonunion labor; and for the general public. The sad truth, however, is that, first, as in the case of prohibition, the law in action has not accomplished much of what its sincere proponents hoped for it, and second, what it has done has not been worth the price.

The question then is whether we will profit from experience, or whether we will insist on perpetuating and multiplying our errors.

What has been the experience to which I refer? I can only report my own observations, and shall limit myself to those that seem to me most significant.

1. It was hoped that the act would lessen industrial strife. Current strike statistics do not always tell the story. It is a fact, nevertheless, for what it is worth, that man-hours lost as a result of strikes in 1948 exceeded the average loss in the prewar years, 1935-39. I know that that argument is a debatable one. It depends on what you use as a basis for comparison. Do you use prewar years or do you use the war and immediate postwar years?



Senator TAFT. Also the number of union members.

Dr. FEINSINGER. That is correct, sir. I say I report this fact, which is not news to you, for what it is worth. Personally I don't place too much reliance on strike statistics. I think in a democracy we may have more democracy in an era when we have more strikes than in an era when we have fewer strikes.

2. It was hoped that the act would improve the processes of collective bargaining. How many representatives of labor or management will testify from experience that it has done so? The experiences of my former students now representing employers or unions in collective bargaining as they relate it to me appears to fall into those categories:

(a) The act has made no difference.

(b) The act has made the employer feel more comfortable in bargaining conferences, having been relieved of threats to "go to the Board."

(c) The act has made it possible for the employer to settle on more reasonable terms, by gentle hints that he may "go to the Board."

(d) The act has made it difficult to settle except on the union's terms, because its representatives as well as the rank and file have become suspicious and resentful, resulting in a take-it-or-leave-it attitude.

Senator TAFT. Which never existed before?

Dr. FEINSINGER. Which did exist before.

Senator WITHERS. Did exist or did not exist?

Dr. FEINSINGER. Which did exist before. My remarks and that particular remark, Senator, are addressed to those situations in which good collective-bargaining relationships existed before. I should have qualified my remarks.

Senator TAFT. One difficult thing in the whole problem is that the conditions that we deal with are so widely different in so many different industries and where you attempt to deal with an abuse that occurs only in one industry, obviously, if it didn't exist in the other industries, the other industries aren't affected at all.

Dr. FEINSINGER. Senator, you have anticipated some of my remarks.

Senator MURRAY. I would like to have the witness complete his statement before he is questioned.

Dr. FEINSINGER. Thank you, Senator, but I am glad for any help I can get along the way. It so happens that the Senator's last remarks parallel a remark which I shall make.

In no case that I know of or that has been reported to me by anyone has the act served to improve relations between the parties gathered about the bargaining table. This is not difficult to understand, particularly from the point of view of the union, since in practice one of the principal subjects of discussion is the form of clause to be inserted in the contract relating to union liability for authorized or unauthorized strikes—scarcely a healthy atmosphere for bargaining. The no-strike clause has lost its moral effect and has become a trading point.

3. It was hoped that the act would protect individuals from the inequity of compulsory union membership. The fact is that over a large area tight closed-shop contracts are flourishing *sub rosa*, which means that on this important issue the written contract no longer means what it says, a result which was never intended, and which may

have an adverse effect on the deep regard which both parties traditionally have exhibited toward the sanctity of the labor contract in its entirety.

Mr. Chairman, I happened to pick up an Associated Press story in the New York Times of February 15, 1949, dealing with reported resistance of the Fisher Body local of General Motors to a cost-of-living wage cut, despite the fact that the contract authorizes General Motors to make such a cut. It is a short quote:

In announcing the move to keep pay at present levels—

I will omit the name—

the president of local No. 45 said that workers' living conditions "ought to be of greater meaning than the sacredness of a contract."

I hope this is merely an interesting coincidence and not a straw in the wind.

Senator MURRAY. I can't hear the witness since there is some noise going on.

Senator DONNELL. Dr. Feinsinger, I could hear you perfectly but I would like to ask if you would be kind enough to read that quotation again.

Dr. FEINSINGER. I repeat that I am referring to this only as having some possible bearing on my fear expressed here that wholly unintentionally we may have lessened the regard of the parties for the sanctity of the labor contract.

This is a story in the New York Times of February 15, 1949, and it relates to the possibility of the General Motors Co., in reliance on its contract right, putting into effect a wage cut. Here is the president of a local saying:

Workers' living conditions ought to be of greater meaning than the sacredness of a contract.

I say it may be only a coincidence. Chances are that it is.

4. It was assumed that a secret ballot would disclose that the rank and file did not want the closed shop in any form. The vote in practically all cases has been overwhelmingly in favor of the modified union shop permitted by the act.

5. It was thought that the act would be used only against bad or irresponsible unions. Yet the favorite defendant before the Board almost from the inception of the act has been the International Typographical Union, heretofore considered as the epitome of union respectability and responsibility.

6. It was believed that a secret ballot on the employer's last offer would reveal that union leaders in pushing for more did not reflect the sentiment of their constituents. The vote in many or most cases has shown that the leaders were more conservative than the rank and file. Up to that time, the time that notion was introduced, all of us who had been engaged in this matter knew exactly what would happen. When the union representatives thought they had a proposition that was fair, they would undertake to take it back and "sell it to the men." That is the classical expression.

Under the notion introduced by the act—and I know this was unintentional, I am merely dealing with effects—the union representative, when informed that this is the last offer of the employer, takes it back and reports to the men, "This is the last offer."

Senator TAFT. How many of those votes were held altogether?

Dr. FEINSINGER. I don't know, Senator Taft.

Senator TAFT. Just one.

Dr. FEINSINGER. I think you are mistaken.

Senator TAFT. I don't know.

Dr. FEINSINGER. I think you are mistaken, and besides that, it is a fact, as you suggest, that the last-offer proposition—I think there was a mistaken notion expressed here earlier that it is limited to national emergency disputes, but my point is that that practice has been picked up.

Senator TAFT. I was very much opposed to it. The House had it in their bill in all disputes, and I was opposed to it.

Dr. FEINSINGER. It is very bad. I have never seen a last offer in my experience, and it certainly puts the employer in a devilish position if the offer is turned down and he has got to either lose face and make another offer or stand on his word and take a strike and have somebody come in and settle it.

I don't think that is good labor relations. My point that I started to make is that the effect of that provision is not at all limited to the cases provided for in the act. A great many employers have picked it up and have used it in big and little industries, have asked the union representatives to take the offer back to the employees as the last offer and get a vote on it.

It is duck soup for the union people, because from that point on, that just becomes a floor for their bargaining.

7. It was predicted that the act would reduce "featherbedding." I have had considerable experience recently in an important case involving the building-trades industry in a large metropolitan city. I acted as an arbitrator. I am acting as an arbitrator in that case, and I observed the way this provision with regard to "featherbedding" worked.

The fact is that the practices found not to fall within the narrow provision of the act have become crystallized, on the ground that not having been made illegal, they were approved by the Government, and it is becoming increasingly difficult in mediation to get unions which heretofore were willing, although grudgingly, to reconsider some of their uneconomic and inefficient practices because of the psychological reaction; the act says only thus and so is featherbedding; therefore, everything else must be not only legal but good.

Examples may be multiplied. However, these examples may suffice to illustrate my point.

Senator HILL. Were you going to give us an example of these practices? If it will interrupt you, I will wait until you get through with your statement and ask it then.

Senator TAFT. These so-called voluntary last-offer votes have been taken with the agreement of the union?

Dr. FEINSINGER. I would put "agreement" in quotes.

Senator TAFT. In a good majority of cases the offer has been accepted, according to the report of the Conciliation Service, which ran that affair.

Dr. FEINSINGER. The difficulty in all of this discussion, as you suggest, is that you cannot draw any firm conclusions unless you have the Taft-Hartley Act and the Wagner Act in existence side by side.

As related to your last point, I don't know whether in those in which the last offer was accepted it wouldn't have been accepted under any circumstances.

Senator TAFT. That is right; but it is purely voluntary with the union. It is urged by the Conciliation Service, apparently, and I think in many cases the union leaders have been glad to get themselves off the hook. They would like to settle, but they would like the men to assume responsibility for it.

Dr. FEINSINGER. I think that is true in some cases. I do not think you can generalize. I know of cases where it has worked the other way.

In important respects, even aside from the revival of the labor injunction, the law is a throw-back to doctrines once discarded as unrealistic and unfair. The antiboycott sections, for example, restore the discredited notion that the only persons interested in a labor dispute are the employer and his employees, thus ignoring the facts of industrial life. Implicit in the act is the notion that individual bargaining is on a par, policywise, with collective bargaining and that the process of organization for collective bargaining is at bottom a contest between the employer and the union for the loyalties of the unorganized workers.

Finally, the act popularizes a subtle distinction between the right of an individual to quit and the right of individuals to quit in concert or the right to strike, a distinction which in modern times has no practical meaning, as Mr. Chief Justice Taft indicated in the American Steel Foundries case a generation ago. How free is the individual to quit his employment in any real sense?

Added to all this is the growing realization among union leaders that in important respects, notably forfeiture of bargaining and reinstatement rights, the processes of the act leave them worse off than if no law had been passed in 1935.

I don't believe it, I am speaking of their opinion.

Important union leaders have privately voiced the view, publicly declared by Mr. John L. Lewis, that labor would be better off to "go back to the pre-Wagner Act days," to the days of trial by combat, and to "take their chances."

Senator TAFT. Mr. Lewis never even needed to use the act. He didn't need the Wagner Act.

Dr. FEINSINGER. He hasn't needed it since a certain day, but my point is other labor leaders and important labor leaders and leaders at the State level have privately voiced the same view that they would be better off to go back to the pre-Wagner Act days. I don't think they would be better off, but that is not the question. I know the public wouldn't be better off.

Senator TAFT. That is so also the building trades. They didn't need the Wagner Act. They would just as soon never have had it, so, for those people, yes, but I doubt very much beyond those two fields.

Dr. FEINSINGER. Well, I can't disclose a confidence, but as recently as yesterday that opinion was expressed to me by the counsel for all of the unions of an international labor organization representing all of the unions affiliated with that organization in his particular State.

Senator PEPPER. Mr. Chairman, may I ask the Senators, respectfully: This is our witness this morning, the time is running short: we have only 20 more minutes of this morning's session. We feel



that Dr. Feinsinger can make a valuable contribution by presenting his statement. We have the afternoon for cross-examination if it should be desired, but we would like to have him have the right to make his statement, because he is not going to have time to finish it by 12:30. I feel, unless all of us refrain from interruption.

Dr. FEINSINGER. I appreciate the Senator's remarks. I want to point out, however, that I personally have no objection to the interruptions.

Senator PEPPER. We understand that.

Dr. FEINSINGER. The severest indictment of the Taft-Hartley Act among experienced persons of unquestioned integrity and impartiality, such as Mr. George W. Taylor, is the invasion by legislative fiat of the area of collective bargaining, the dictation of what cannot and what must go into the collective-bargaining agreement. To many sincere people it may appear that the charge is exaggerated. "After all," they say, "the act deals only with a few abuses, and these are so inimical to the public interest that they cannot go unnoticed." Among the subjects of dictation are union security, the check-off, health and welfare funds, pensions, and "featherbedding." In addition, of course, are those subjects, such as union liability for unlawful acts whether authorized or not, which the parties have been compelled indirectly to include in the area of bargaining.

We have now in embryo a new policy—legislative determination of the terms and conditions of private employment. Already in a number of States this policy has been extended to the limit in public-utility disputes under the guise of compulsory arbitration. Where are we heading? Despite incursions by legislation and collective bargaining, management still controls the employment relation in its broadest aspects. Suppose labor, whether organized or not, takes its cue from the present act and presses the approach to its logical conclusion? I might say parenthetically that if I have any point to make, this is the point: Can it reasonably be argued that if the individual worker is to be protected against arbitrary action by unions, apropos his employment, he should not also be protected against arbitrary action by employers in all aspects of the employment relation?

To repeat, it does not take too much imagination to predict that union leaders, pressed by extremists to pick up the Taft-Hartley approach, may be forced to demand similar legislation in labor's interest. Such demands will not go without precedent. I am informed that legislation in Austria, Czechoslovakia, and Germany gives unions a direct voice in the hiring and firing of employees—without a closed shop, and with no greater proportion of union organization than in America; that in Austria the law extends to discipline; that in Germany discharge not warranted by economic or technical conditions is forbidden; that Norway and Venezuela require severance pay.

I might say parenthetically, in this country where the Government has got into the field of fixing terms and conditions of employment, as it has in many instances, they have taken very kindly to the notice of severance pay, for example, to the notion of pensions.

I know in the closing days of the regime of the War Labor Board, of my own knowledge, how increasingly difficult it became to resist demands by unions to get over into areas which hitherto hadn't been commonly regarded even as subject to the processes of collective bargaining.

To continue: That Brazil, Chile, and Czechoslovakia (before 1948) require that profits be shared with the employees; and so on.

I do not say that legislative control of the employment relation in its entirety is good or bad. I think it is bad, but I am certain that the proponents of the act did not intend or foresee such a result. Yet they have started the ball rolling in that direction, and who is to say where and when it shall stop?

We are really at the crossroads. I hate to indulge in platitudes, but we are at the crossroads of two conflicting ideologies. The choice is clear. We must either return the incidents of the employment relation, beyond the establishment of minimum standards, to the parties, or we must be prepared to have the Government play the role of the camel in the tent of collective bargaining.

On the subject of national emergency strikes: We are all groping for a way to achieve industrial stability in essential industries, without recourse to undemocratic methods. I agree with Senator Taft, who has stated many times that he thinks the definition of essential industries in this connection has been much too elastic. I have read the testimony of Mr. William H. Davis before our committee and have listened on several occasions to Senator Morse, with both of whom I had the privilege of working during the war years, including work on Government seizure cases. Both of these men have a keen grasp of the issues involved, and I can add very little to their exposition of the problem. I take the liberty, however, of making one suggestion which seems particularly appropriate at this juncture.

I have learned by experience not to put too much faith in any particular formula as a patent remedy for any crisis. Different areas, different industries or unions, different personalities, different times, and circumstances, require different treatment. I suggest that in considering how best to equip the President to handle industrial crises, you do not limit him to any one mechanism. I suggest that you provide him with the power to do the needful in the particular case by amplifying rather than restricting the power which he might otherwise possess. And I am not embroiled in that argument, as to whether he does or does not possess them. I think it is a thing at issue. I suggest you ought to give him the power to do the needful, whether it be the appointment of a fact-finding board, the appointment of a single mediator, or what not. If you select any particular mechanism, such as fact-finding, make it as flexible as possible, so that the President may designate an all-public or tripartite board; may direct it to report with or without recommendations; or may invoke similar variations. In addition to giving the President a flexible choice of methods, the suggested approach will avoid the situation which has developed in the past, in which one party or the other, knowing exactly what the Government would do under its fixed formula, has deliberately chosen not to settle because it thought the formula would operate in its self-interest. If it be argued that this will leave the parties to a particular dispute in the dark, the answer is that people who fail or refuse to settle their differences at the bargaining table are not entitled to advance knowledge of how the Government will deal with the public emergency which they may create.

Beyond this I have nothing to add which has not already been said by such experts as Senator Morse and Mr. Davis better than I could say it. This much, however, I believe: Neither the labor injunctions

nor plant seizure will facilitate agreement or improve industrial relations over the long pull. But if we have one, I cannot see how we can avoid having the other, without (a) exposing the Government to the charge of throwing its weight on one side of the dispute, or (b) invoking a presumption that either labor or management is responsible in every dispute. Needless to say, from the injunction and seizure it is only a short step to Government dictating the terms and conditions of employment as well as prices and profits in private industry in peacetime, a solution which I am sure no one in this room will support.

My remarks, as you may have observed, have been confined to title I and title III of the present act, and only to portions thereof. By way of summary and by way of preface to my recommendations, it is my opinion that the law in action does not accomplish what was claimed or hoped for it, and that what it does accomplish is at too great a price. The cure in some respects is worse than its disease. If Congress is of the opinion that the claimed abuses at which the act is aimed, or other abuses, must be dealt with by legislation, I respectfully suggest that we must dig deeper than has been done to date.

In legislating against boycotts, featherbedding, the closed shop and the like, we have dealt only with externals. Scratch the surface of some of these practices and you will find they reflect basic social and economic problems, as well as problems of everyday human relations, which, up to now, have been almost totally ignored or bypassed. For example, beneath the issue of featherbedding may lie problems of job security, including the specter of technological unemployment. Beneath the closed-shop issue may be the need for protection against deliberate and malicious undermining, by certain types of employees, of duly established collective-bargaining agencies; a natural resentment against "free riders"; or a need for specialized employment agencies for casual employers or casual employees, as in the building trades and longshore industries. Beneath the issue of secondary boycotts may be the need for protection against unfair wage competition. And so on.

In brief, it is an oversimplification to conclude that the practices attacked by the Taft-Hartley Act—and others sought to be added—are ipso factor abuses or not abuses. If they are abuses, I don't think they are of a nature that calls for legislative surgery, at least without a previous X-ray, so we may operate on the affected part and leave the healthy part of the body of collective bargaining unimpaired.

The human mind has not yet devised a perfect law, least of all in an area such as this involving human relations. One of the authors of the present law has had the courage and the wisdom of experience to concede that the law goes too far in some particulars. What now? The problem is too serious to be sloughed off by a patchwork job or a statute with so many facets as this. I humbly and respectfully suggest that you proceed as follows:

1. As a point of departure, reestablish in simple and clear terms the basic philosophy of free collective bargaining as the cornerstone of our national labor policy. In effect, this means the reenactment of the Wagner Act, entangled in the present law with many irrelevant or contradictory provisions.

2. Adopt such amendments to the Wagner Act as thus reestablished, as are apparently agreed by all factions to be necessary or desirable in the public interest. I refer particularly to a procedure for the settle-



ment of jurisdictional disputes, and a procedure for the settlement of disputes concerning the interpretation or application of collective-bargaining agreements. A good argument can be made if we all are agreed on what we are talking about for the imposition of a reciprocal duty on unions to bargain. The difficulty there is more than one of semantics. I personally do not believe that any further amendments are vitally necessary at this time.

3. Authorize the establishment of a Commission on Labor-Management Relations to be appointed by the President, patterned after the royal commissions of England, in charge of procedures and the breadth and scope of investigation, to study a selected group of labor problems to be outlined by Congress, with instructions to report within a year or such longer time as may be required. Such a Commission should consist of qualified, impartial, public-spirited citizens, who can be relied on to make a careful, comprehensive, and competent study of all aspects of the problems assigned, in the framework of sound, long-range national policy as I have attempted to define it.

4. Pending the report of the Commission, pass enabling, not restrictive, legislation which will enable the President, through the discretionary exercise of a range of powers adaptable to particular cases as they arise, and based on the principle of persuasion\* rather than force.

It is too much that, being human beings, we will ever reach unanimity of opinion in this particular area of human relations. I am not sure that such unanimity is even desirable in a democracy. It is not too much to hope, however, that given the support of Congress and the confidence of far-sighted representatives of labor and management, such a Commission can make a constructive and positive contribution to the progress of industrial democracy in a free society, our common goal.

Thank you very much.

Senator MURRAY. In respect to this provision in the Taft-Hartley law which allows suits in the Federal courts by management against labor and by labor against management for alleged breach of contract, is it ordinarily the practice of labor to think in terms of suing the employer if he breaches his contract of employment, or do they think in terms of other redress such as striking and picketing and the like?

Dr. FEINSINGER. The latter, if you add one, this: Settlement.

Senator MURRAY. Settlement of the dispute?

Dr. FEINSINGER. Peaceful methods, bargaining, conciliation, voluntary arbitration. The answer to the first part of your question is that labor does not ordinarily think of going to the courts to settle a "beef" which they may have.

Senator MURRAY. Do you think that this provision in the Taft-Hartley law, which authorized for the first time in the manner in which it is provided for in the Taft-Hartley law such suits, is a salutary provision?

Dr. FEINSINGER. I think it is the wrong emphasis. I do not believe any particular group should be denied access to court for legal wrongs. In the first place, we are not talking about legal wrongs here. In the second place, the question is: Where should Congress put its emphasis? Should it put the emphasis on lawsuits or should



it put its emphasis on settlement in the traditional way, plus other voluntary methods? The answer to me is clear.

Senator PEPPER. I was very much impressed by that part of your testimony which pointed ahead to where the Taft-Hartley Act and that theory of approach would lead. During the war was there not a demand made in some cases—or it may have been right after the war, I believe it was in the General Motors case—on the part of labor to see the books of management or at least let the Government board, maybe the War Labor Board, see the books of management to see whether they were able to pay the wage that was demanded?

Dr. FEINSINGER. That issue arose in the hearings before the fact-finding board in the General Motors case appointed by the President in the latter part of 1945 or the first part of 1946, I think around the first of the year, 1946.

Senator PEPPER. It was your opinion that we continue the approach which the Taft-Hartley Act indicates, that there will be more and more pressure upon Congress to provide by legislation that either an impartial board should see the books of management or labor should be disclosed the books of management in a wage dispute to see whether management can pay that wage or not?

Dr. FEINSINGER. I think it is not only logically evitable, but I think it has been proved to be the case in European countries to which I referred, and I hope we do not base our American labor policy on what is done in Europe or any place else.

I think we might profit by their experience, and I think the answer is "Yes."

Senator DONNELL. Would the Senator ask him about that Royal Commission which he referred to?

Senator PEPPER. Senator, I will be glad to yield to the Senator from Missouri, but I will get to that in a moment.

Senator DONNELL. Thank you.

Senator PEPPER. Not only may the question of the disclosure of the books of management rise if we continue in the direction of the Taft-Hartley law, but may not there also arise the demand on the part of labor when they seek a wage that management refuses, to know how much management is setting aside for the stockholders in the way of dividends, the question of whether it is too much or not?

Dr. FEINSINGER. Unquestionably.

Senator PEPPER. Whether the profits of the enterprise are being fairly divided between workers and stockholders?

Dr. FEINSINGER. I don't think once you start down the line that you can draw the line any place.

Senator PEPPER. If we pursued that same course of thinking in legislation, wouldn't it indicate that Congress might be subjected to pressure to provide that labor might also have the right to question whether or not the salaries paid to executives were too much, whether bonuses paid to executives were excessive, whether management used too much money for advertising or public-relations purposes?

Dr. FEINSINGER. They do now, Senator.

Your question is: If this law is amplified in the direction they state, wouldn't they have the legal right to do it?

I think they would be given the legal right to do it by legislation.

Senator PEPPER. The Taft-Hartley law seems to emphasize the protection or the thought that the law can protect the individual worker

in respect to his right to work and his job security, as it were, free from interference by the union.

Doesn't management in this country have a completely untrammelled authority to hire and to fire, except in the narrow category of cases where their discretion is controlled by an express contract with the employees, or except as to the prohibition against their firing anybody because of his union activity? Otherwise, isn't management completely free to hire and to fire?

Dr. FEINSINGER. As a general statement I think that is correct.

Senator PEPPER. You were suggesting that if we continue in the direction indicated by the Taft-Hartley law, that labor will inevitably demand that Congress provide that before management lays off workers that labor may have the right or a public board may have the right to see whether they could afford to keep them on.

For example, in the case of the American Telephone & Telegraph Co., if I remember correctly, I have seen the figures that during the depression they maintained about a uniform level of dividends, although they laid off several hundred thousand, or more than a hundred thousand, of their workers, that in a case such as that labor would demand that we legislate in order to maintain full employment, that management not lay off workers when their economic situation will permit them to retain those workers.

Dr. FEINSINGER. If I am not mistaken, Senator, isn't one of your distinguished colleagues now pressing a bill relating to Government contracts which provides for annual wages?

Senator PEPPER. I believe I have heard of such legislation.

Dr. FEINSINGER. I think that answers your question.

Senator PEPPER. In the second category of cases, if we continue to go in this direction, may we not expect pressures from labor to provide that management's discharge of a worker be subject to scrutiny at least by an impartial board or by a Government board, if not by the union, to see whether or not the management acted upon authority or upon justification and good reason, or whether management may have acted arbitrarily or capriciously?

Dr. FEINSINGER. My answer is "Yes," but may I qualify it to this extent: In many cases, as you all know, the employer and the union agree by contract that certain types of discharges be reviewed, but only on certain grounds. Outside of that limitation imposed by collective agreement, you are correct in saying that management does now have, at least as a matter of law, discretion over hiring and firing.

Senator PEPPER. In the case where unionism does not exist among the workers and there is no contract against discharge, management has complete and arbitrary power to discharge persons without any requirement for justification. If we continue to legislate, might not unorganized workers make demands upon us that we provide that where a man's job, where his livelihood, where the paying of the rent and the grocery bill depend upon that man having his job, that management cannot capriciously or for personal reasons discharge that man from his job?

I say "may not," if we continue in the direction of the Taft-Hartley law, we find ourselves confronted with such demands?

Dr. FEINSINGER. It is a fact in Europe, in the countries mentioned, that although there is no closed shop and although the degree of unionism is no greater than here, such demands have been made by

the working classes and have been granted when their representatives were in political power.

Senator PEPPER. Mr. Feinsinger, what the Thomas bill proposes is simply that management and labor shall be free after full and fair collective bargaining to provide, among other things, for a closed shop, or what we call a closed shop. It doesn't say they must agree upon a closed shop, but it prevents anybody from preventing them from including a closed-shop provision in a collective-bargaining contract. Isn't that true?

Dr. FEINSINGER. That is true, sir.

Senator PEPPER. Isn't the closed-shop agreement fundamentally an agreement between the employer, who has the complete right to hire and fire, and the workers, who have the complete right to determine with whom they will work, that management will not hire anybody but a union man and that the workers will not work in a plant with anybody but a union man? Isn't that simply what it comes down to?

Dr. FEINSINGER. Any general answer I might give to that question might be misleading. I would prefer to pass on that question unless you give me an opportunity to refine my answer.

Senator PEPPER. I would be glad for you to make any comment you want. What I want to suggest is this: Is it not a fact that the so-called closed-shop agreement is the result of the exercise of a free choice and a power in the case of management to hire and fire according to its own ideas, and in the case of the employees to choose with whom they will work, simply those two groups coming together in an agreement on the matter?

Dr. FEINSINGER. I think I can answer "Yes" to that.

Senator TAFT. Isn't it also true that under the principles of the Wagner Act the closed shop would be prohibited unless it were absolutely and expressly authorized by law in the Wagner Act?

Dr. FEINSINGER. I don't believe so.

Senator TAFT. Why was it, then, authorized by law in the Wagner Act, expressly in so many terms?

Dr. FEINSINGER. Why was it authorized by law?

Senator TAFT. Yes, absolutely. It was felt that otherwise the employer would be discriminating and violating the principle of the Wagner Act by shutting out a nonunion man.

Dr. FEINSINGER. Yes; I see what you mean. In that respect you are correct. I thought you meant to suggest the closed shop was ipso facto illegal prior to the Wagner Act.

Senator TAFT. I mean, in accepting the Wagner Act we necessarily must pass on the question of the closed shop. It is there.

Dr. FEINSINGER. I think you must pass on it but you can pass on it either way.

Senator TAFT. Yes.

Senator PEPPER. We don't forbid it in the Wagner Act, we simply permit it; whereas, in the Taft-Hartley law it is forbidden, that area of collective bargaining is closed off to management and labor by the Taft-Hartley law.

Senator TAFT. And it would be closed off by the Wagner Act if you didn't put in an express provision authorizing it.

Dr. FEINSINGER. I am beginning to wonder on which side of the table the college professor is, Senator.

Senator PEPPER. You referred to the national emergency category, and if you are going to have the right of injunction, should you also have the right of seizure?

Dr. FEINSINGER. I am afraid it is a necessary corollary.

Senator DONNELL. May I ask the Senator: Do you intend to continue? We are 5 minutes over.

Senator PEPPER. I plan to desist and we will determine after lunch what we will do.

Senator MURRAY. We will recess until 2:30 this afternoon.

(Whereupon, at 12:35 p. m., the committee adjourned, to reconvene at 2:30 p. m., of the same day.)

#### AFTERNOON SESSION

Senator MURRAY (presiding). Dr. Feinsinger, you may take the witness stand.

Senator DONNELL. Shall I proceed?

Senator MURRAY. The Senator from Missouri. Would you like to proceed?

Senator DONNELL. I would like to ask him some questions.

#### STATEMENT OF NATHAN P. FEINSINGER—Resumed

Senator DONNELL. Professor Feinsinger, you have undoubtedly had a wide and interesting experience in this line of work, and we are glad to have you here to give us your judgment.

I want to ask you, you have been a professor of law at the University of Wisconsin for approximately 20 years?

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. Where did you take your preliminary scholastic training?

Dr. FEINSINGER. University of Michigan.

Senator DONNELL. When did you take your degree there, and what degrees did you take?

Dr. FEINSINGER. I took my bachelor of arts degree in 1926, and my doctor of laws degree in 1928, and then I spent a year at Columbia Law School in New York, doing research for the Rockefeller Foundation.

Senator DONNELL. Then you became a member of the faculty of the University of Wisconsin at that time?

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. At the conclusion, that is to say, of your Columbia University work.

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. Did you become a full professor or assistant?

Dr. FEINSINGER. I started out as an assistant professor, and then was promoted to an associate professor, and eventually, I do not remember the exact date, to a full professor.

I have also taught at the University of Michigan and Chicago Law Schools.

Senator DONNELL. Yes; you have been professor of labor law only since 1937?

Dr. FEINSINGER. I did not know the first thing about labor law and labor relations before 1937, and I got into the field entirely by accident.



Senator DONNELL. Yes; so in your preliminary training you had never specialized along the study of labor law?

Dr. FEINSINGER. That is correct; yes, sir.

Senator DONNELL. What subjects have you taught in the law department of the University of Wisconsin since 1929 to 1937?

Dr. FEINSINGER. To the best of my recollection the subjects that I taught included domestic relations, that was the area in which I specialized during my year at Columbia, and an area, incidentally, which bears a very close relation to labor regulations in many respects. [Laughter.]

Senator DONNELL. Now, you are referring to the marriage or divorce part of the subject? [Laughter.] Or both?

Dr. FEINSINGER. Both, Senator.

Senator DONNELL. Yes.

Senator MURRAY. Disputes. [Laughter.]

Dr. FEINSINGER. I discovered—well, I will not tell you what I discovered. Maybe you will ask me.

Bills and notes, partnerships, that, too, bears a relationship to labor relations; suretyship, agency seminars—prior to 1937?

Senator DONNELL. Yes; that is the day that you became professor of labor law.

Dr. FEINSINGER. That is right, sir. As you know, I understand that you yourself have a background in a lot of teaching, Senator.

Senator DONNELL. No; I have never taught.

Dr. FEINSINGER. You are not a lawyer?

Senator DONNELL. I never taught; I said teaching.

Dr. FEINSINGER. I understood you had been a law teacher and, therefore, I expected some sympathy.

Senator DONNELL. Inasmuch as I have not been a law teacher, I will extend to myself the sympathy in having to examine you. [Laughter.]

Dr. FEINSINGER. In any case, if you do not know the practice, it is to take a young professor and shift him around the curriculum, having him fill in blank spots, and give him his, well, as integrated a training in various aspects of law as is possible, and that was my experience for the first few years.

Senator DONNELL. You never taught evidence?

Dr. FEINSINGER. I never taught evidence as a separate subject. Of course, in any courts in law you deal necessarily with questions of evidence and rules of evidence.

Senator DONNELL. Yes; but you have never actually taught the subject of evidence as a separate subject.

Dr. FEINSINGER. That is correct.

Senator DONNELL. Now, none of these subjects that you refer to, as I see it, unless possibly the field of agency, would have anything very closely connected with the field of labor law; am I correct in that?

Dr. FEINSINGER. No; I cannot quite agree, Senator. The whole subject of equity, particularly the use of injunctions—

Senator DONNELL. I did not know that you taught equity. You did not give me that.

Dr. FEINSINGER. I did not teach equity; I studied the law of equity, of course.

Senator DONNELL. Pardon me, I am asking what you taught.

Dr. FEINSINGER. As a separate subject, that is correct.

Senator DONNELL. Did you teach equity?

Dr. FEINSINGER. No, sir.

Senator DONNELL. Now, let us see, you taught domestic relations. Of course, that relates to marriage and divorce primarily; bills and notes, and that relates to promissory notes, generally speaking, negotiable-instruments acts and matters of like character; partnerships, dealing with the relations of persons carrying on partnerships such as, perhaps, the operation of real-estate contracts. Suretyship, which is the relation of the person who acts as a surety, and perhaps involves the distinction of suretyship and guaranty; agency, in which as I say, there may be something reasonably closely akin to labor law, but is there any other subject that you taught?

Dr. FEINSINGER. Yes; I taught business law in the commerce department for the first 2 years that I was at Wisconsin.

Senator DONNELL. Business law in the commerce department. Did you teach any labor law in that business law, or was it bills and notes and partnership and matters of that sort, suretyship, items which you are teaching independently?

Dr. FEINSINGER. I think your analysis is correct, Senator.

Senator DONNELL. Yes.

Now, Professor, you became in 1937 a special assistant to the Attorney General of Wisconsin. However, you continued your work as professor of labor law in the university; is that correct?

Dr. FEINSINGER. That is correct.

Senator DONNELL. So that you did not devote all your time to this special assignment as special counsel to the Wisconsin Labor Relations Board: is that correct?

Dr. FEINSINGER. That is correct.

Senator DONNELL. You omit here, in your statement of your career, the year of 1940. What did you do in 1940?

Dr. FEINSINGER. In the field of labor law?

Senator DONNELL. Well, in any field. What were you doing? You give us 1937 to 1939, and then you jump to 1941 and 1942. In those two intermediate years, what did you do?

Dr. FEINSINGER. I was teaching at the university law school.

Senator DONNELL. Teaching at the university law school. You have given us, then, right down the line, your experience. Yes, right up to the present time; yes, sir.

I observe that in the chairmanship which you occupied of the fact-finding board in the Pacific Gas & Electric, and Milwaukee Gas & Light disputes, you were appointed by the Secretary of Labor; is that correct?

Dr. FEINSINGER. That is correct.

Senator DONNELL. Were you also appointed by the Secretary of Labor on the fact-finding board in the steel dispute? No; you were appointed by the President there.

Dr. FEINSINGER. That is right.

Senator DONNELL. Do you know whether or not the appointment was agreeable to the Secretary of Labor, and whether he might have suggested your name for that appointment?

Dr. FEINSINGER. I do not know. I think Mr. John Steelman was making the recommendations for those appointments at that time.

Senator DONNELL. Yes. So in this one chairmanship, that is to say on the Pacific Gas, and Milwaukee Gas, you were appointed by the Secretary of Labor.

Then, 1946 and 1947 you were a special representative of the Secretary of Labor in various disputes, were you not?

Dr. FEINSINGER. That is right.

Senator DONNELL. That included the west coast shipping, the Hawaiian sugar, and the pineapple and longshore disputes.

Dr. FEINSINGER. That is right, disputes that nobody else wanted to handle.

Senator DONNELL. That is right, and in that appointment you were likewise the representative and appointee of the Secretary of Labor, is that correct?

Dr. FEINSINGER. That is correct.

Senator DONNELL. Have you been appointed by the Secretary of Labor in any other matters?

Dr. FEINSINGER. I recall only one instance, and that was an appointment by the then Acting Secretary of Labor, Mr. Gibson, John W. Gibson, as an arbitrator in the Philadelphia Building Contractors' dispute.

In that case a strike was settled by stipulation that the issue would be submitted to an arbitrator to be designated by the Secretary of Labor, and that also was a case in which the Secretary, the Acting Secretary, urged me to participate because he could not get anybody in the eastern part of the country to accept his assignment.

Senator DONNELL. Yes. Is Mr. Gibson a member of a labor union, do you know?

Dr. FEINSINGER. I do not know for a fact.

Senator DONNELL. Is he one of the two Assistant Secretaries of Labor?

Dr. FEINSINGER. That is correct.

Senator DONNELL. I think, am I correct in saying, that he is a member of a labor union? I say that subject to correction if I am in error, but there is one CIO and one A. F. of L. man, as I understand it, occupying respectively the position of Assistant Secretary of Labor.

Dr. Feinsinger, your statement, of course, involves a great deal of thought in its preparation, and I shall not undertake to take it up in great detail.

I observe at page 9, if you have that before you, this typewritten copy, that in referring to the emergency strikes, I judge it is, you say:

I suggest that in considering how best to equip the President to handle industrial crises, you do not limit him to any one mechanism. I suggest that you provide him with the power to do the needful in the particular case—

and so forth.

Now, by the word "you" in the sentences you have quoted, I assume you mean Congress, is that right?

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. Then, in a later portion of your statement, particularly at the bottom of page 2, you say, among the recommendations that you make, "pending the report of the Commission, pass enabling, not restrictive," and the word "pass" hooks back up to the word "you" earlier.

Dr. FEINSINGER. Yes.

Senator DONNELL. That is to say, Congress, in other words—you are recommending that Congress—

pass enabling, not restrictive legislation which will enable the President, through the discretionary exercise of a range of powers adaptable to particular cases as they arise, and based on the principle of persuasion rather than force.

Am I correct in the conclusion, Mr. Feinsinger, from the fact that in both of these instances, both on page 9, where you suggest that Congress provide the President with the power to do the needful, and again on this page later in the report where you suggest that Congress pass enabling legislation, to quote you "which will enable the President, through the exercise of a range of powers," and so forth, to do certain things.

Am I correct in the conclusion there, from that, that you do not think the President has an inherent power to deal with the subject of emergency strikes by seizure or by the application to a court for injunctive relief? Am I correct in that conclusion?

Dr. FEINSINGER. I do not know, Senator. The peacetime powers of the President, or the limits of the peacetime powers of the President to handle emergencies, are almost wholly unexplored.

Senator DONNELL. Unexplored. You mean by the courts?

Dr. FEINSINGER. That is right.

Senator DONNELL. Well, I am asking you whether or not I am correct in the conclusion which I draw from your advice to Congress that it pass this enabling legislation which will enable the President to do certain things, and that we provide him with the power to do certain things, I am assuming that you do not think that he has such an inherent power as that to which I have referred. Am I correct in that?

Dr. FEINSINGER. Not quite, Senator. I think, whether or not he has, it will be helpful, to some extent, certainly not hurtful, for Congress to add the sanction of its opinion that he might do thus and so to any powers he might otherwise have.

For one thing, it will forestall litigation in case he attempts to act in the way you suggest that he act, as to whether he can or cannot. I do not think the problem should be resolved into a question as to whether he does or he does not have the powers or whether the powers that you decide to grant him are additional to powers or overlap powers he already has.

Senator DONNELL. Well, at any rate, I judge from what you have just said, that you think a definite statement in the act that Congress shall pass as to what powers Congress desires him to exercise would be helpful as tending to clear up any possible controversy, and thus obviate the necessity of the trial of matters in the courts in the event of stress.

Dr. FEINSINGER. I think that is a reasonable view, Senator.

Senator DONNELL. Mr. Feinsinger, I return now, if I may, to the question as to what your own personal opinion is as to whether or not he does possess those powers, bearing in mind your suggestions, that I have read to you here, to us, that we pass enabling legislation which will enable him, and that we provide him with power to do these various things. Do you think he has those powers, those inherent powers of action in the case of a national emergency?

Dr. FEINSINGER. Well, Senator, I know that you would not want me to speculate on a subject as important as that, nor would you



want me to answer it unless I had ample time to make a real study of the question, which I have not.

Senator DONNELL. So, you would prefer not to express an opinion on that.

Dr. FEINSINGER. That is right, sir.

Senator DONNELL. But, as you have indicated, the subject has not been explored through the courts, is that correct?

Dr. FEINSINGER. To any great extent, that is correct, sir.

Senator DONNELL. Are you familiar with the United Mine Workers case at 330 United States?

Dr. FEINSINGER. I am, sir.

Senator DONNELL. Do you regard that case at all determinative on whether or not the President does or does not have those inherent powers?

Dr. FEINSINGER. I do not think it is conclusive.

Senator DONNELL. Well, it does not bear on its side, top, or bottom, does it, in fact?

Dr. FEINSINGER. Well, you have——

Senator DONNELL. I am making that pretty broad.

Dr. FEINSINGER. Yes, it is a broad statement, and I would prefer not to pass judgment on it again, Senator, because I have not had occasion to make the kind of study of the problem that one should make, as a lawyer, if he intended to express an opinion on the subject.

Senator DONNELL. But you are familiar with that case, 330 United States, and you are not telling us at this time that it does establish the proposition that the President possesses those inherent powers, am I correct in that statement?

Dr. FEINSINGER. I will make no such affirmative claim, you are right.

Senator DONNELL. Thank you, sir.

Dr. Feinsinger, you have referred to the subject of freedom of choice, have you not, in your testimony? That is to say, in freedom of choice, where you have a closed shop, that the employer has the freedom of choice to choose whom he wants, provided he is a member of the union, and the member of the union has a right to get a job with the employer if he can get it. I do not know whether you refer to that, but the question was put to you, and you responded to it.

Dr. FEINSINGER. Senator Pepper put the question to me.

Senator DONNELL. Senator Pepper put the question to you. I would like to put this question to you on this matter of liberty and freedom, freedom of choice.

Suppose that you have perfected yourself in some line of work, as for illustration, well, iron molding, just to take that example, and you have not belonged to a union, not because you could not get in, but because you do not want to.

You do not want to, just as you say, "I may not want to belong to the Masonic Order or the Knights of Columbus or something else; I just do not want to belong. I do not like to."

You have a right to do that under our freedom-of-choice system in this country; you have a right to determine that you shall join or not join.

Dr. FEINSINGER. Generally speaking.

Senator DONNELL. Well, there are no exceptions to that, are there?

Senator AIKEN. The Army.

Senator NEELY. Yes, you have to join the Army.

Senator DONNELL. Of course you have to join the Army. I am talking about voluntary associations.

Senator NEELY. You have to join the Integrated Bar Association to practice law.

Senator DONNELL. You do not have to do that.

Senator NEELY. You do in my State.

Senator DONNELL. Not in my State. You do not have to join anything there to practice law. You have to pay your dues.

What I mean, without refining this down to the point that these gentlemen have done, generally speaking you do not have to go into the Masonic Order or into a literary society or into the Baptist Church or any other organization if you do not want to, do you?

Dr. FEINSINGER. Generally speaking, that is true. In our law school you do, if you want to get a law training, you have to join a case club, for example.

Senator DONNELL. Oh, yes.

Dr. FEINSINGER. And things of that nature. Generally speaking, without attempting to refine the answer, it is pretty hard for me to answer any better until I hear what you are leading up to.

Senator DONNELL. All right, here is what I am leading up to. I just want to establish the proposition on which I think we all agree in advance that we do not, generally speaking, have to join anything, so that when Mr. Feinsinger says, "I do not want to join a labor organization; I just do not want to do it; maybe I ought to, but I just do not want to do it," but you perfect yourself, and you become a No. 1 iron molder, and you go up to Senator Murray's iron-molding plant, and you say, "I want a job," and the Senator says, "I have got a closed shop here, Mr. Feinsinger; I would like the best in the world to take you, but you have to see that I have a contract here with a labor union, and I cannot do it."

You say, "I am sorry, I will go down to the next block and maybe I will find a job there."

You go down there, and you find the same identical thing at that place of business, and you become a little discouraged, and you think, certainly the third place will be all right, and you go down there, and that has a closed shop, and the first thing you know you have gone all over the city, and maybe the adjacent cities, and the unions have been successful in getting the closed shop in, and you cannot get a job.

Now, has that sort of freedom presented freedom of choice on the part of Senator Murray, who would have liked to take you on, and has it prevented a freedom of choice in your choosing the employer whom you would like to take you, if he could? Is there any restriction on freedom of choice that the closed shop has brought on there?

Dr. FEINSINGER. I do not know whether you are asking a question or making a statement.

Senator DONNELL. I am both, but I am asking you the question.

Dr. FEINSINGER. In a broad general sense, of course, there is a restriction on freedom of choice, along with a great many other restrictions.

If I am an iron molder, and I go to the same three shops, and the employer says he does not want to hire me, and he does not tell me why or he gives me a reason that does not make any sense to anybody, I may feel just as disappointed, but there is nothing I can do about it.

Senator DONNELL. In other words, he has had the freedom of choice there to take you or not take you, and he has decided he does not want you, he does not want to take you.

Dr. FEINSINGER. That is right.

Senator DONNELL. Along comes this pesky closed shop, and where-as he may say, "Well, I am not going to take on anybody," he himself is restricted right down so that he cannot take you if he wants you the best in the world; he cannot take you because he has made a contract with a labor union that it is a closed shop.

There is certainly, in a sense, at any rate, a restriction on the freedom of that employer; is there not?

Dr. FEINSINGER. No; I understood you to say he has agreed by contracts.

Senator DONNELL. Yes; so I understand. Well, I will put it this way: He has contracted and has put himself in a position by contract where, after the signing of the contract, he cannot take on anybody whether he wants him or not. That is right, is it not?

Dr. FEINSINGER. So, by every term of the contract, Senator, he has voluntarily entered into a contract.

Senator DONNELL. Yes; he has voluntarily done it.

Dr. FEINSINGER. That is right.

Senator DONNELL. And he has done it, is it not true, in many instances because the labor union has indicated to him that it is going to be mighty hard for him to get any employees unless he signs the contract. That is, for illustration, the situation with respect to the typographical union.

Dr. FEINSINGER. Well, it has not been my universal experience by any manner of means. I know of a great many cases where the employer has called up the business agent and has said, "I would like you to come over and sign a closed-shop contract with me."

Senator DONNELL. Yes.

Dr. FEINSINGER. Even though the union did not have a single employee as a member of the union, because that employer thought it was best for his business.

Senator DONNELL. Well, I do not question your statement on that, but you take, in the typographical trade, for instance, is it not a fact that it would be very difficult for one of the large city newspapers to operate without very great inconvenience unless it had men in its operating fold who were members of the union? Have not some of the Chicago papers found that out here very recently?

Dr. FEINSINGER. Well, Senator, I am perfectly willing to submit to the most detailed examination, and I know that you are trying to accomplish something for the public interest here, on any case with which I have had any direct connection.

Senator DONNELL. Very well.

Dr. FEINSINGER. But I do not think you really want me to testify in response to hypothetical questions involving cases that I have had no contact with.

Senator DONNELL. Very well.

Dr. FEINSINGER. Local cases.

Senator DONNELL. Very well, I will not ask you then on that.

You say that you had never taught evidence in the university but that, incidentally, the subject of evidence comes up—

Dr. FEINSINGER. In every course.

Senator DONNELL. In every course. Do you regard it as advisable to have a law in effect under which a board can sustain—I am going to ask you this: Do you think it advisable that there be a law under which the findings of an administrative board as to the facts, if supported by evidence, regardless of whether substantial or not, shall be conclusive? Do you regard that as a sound principle of evidence?

Dr. FEINSINGER. Well, that is standard in administrative law, as I understand it.

Senator DONNELL. Well, let me just continue.

Dr. FEINSINGER. Or it was at the time.

Senator DONNELL. You think that is the law today under the Administrative Procedure Act?

Dr. FEINSINGER. I think it is worded a little differently, Senator, but I do not think the substance has been changed.

Senator DOUGLAS. Would the Senator be kind enough to give the reference?

Senator DONNELL. Yes, sir, I will. You will find it in the Taft-Hartley Act. I should say the Wagner Act at section 10, subdivision (e). You can also find it by looking into the Taft-Hartley Act, which contains all that language, except the words "as to the facts" and puts in various other words.

Dr. FEINSINGER. May I be excused to get the folder which has my copy of the act?

Senator DOUGLAS. I was inquiring whether your phrase "whether substantial or not," whether that was—

Senator DONNELL. That is not in it. That is parenthetical on my part. I will read it when the witness gets back here.

Dr. FEINSINGER. I know the section to which you refer.

Senator DONNELL. You know the section to which I refer?

Dr. FEINSINGER. I had considerable experience in administering the provision in the so-called Little Wagner Act in Wisconsin from 1937 to 1939, where we had the identical provision.

Senator DONNELL. Then, we will take that provision, and so there will be no possible ground or feeling that I have interpolated something in here of my own language—

Dr. FEINSINGER. You have not; you were perfectly accurate.

Senator DONNELL. Perhaps, I did interpolate without putting it off by quotation marks. Here is the wording, at any rate, of the Wagner Act.

Dr. FEINSINGER. In 10 (e).

Senator DONNELL. In 10 (e). It is referring here to findings of the Board, that is, the National Labor Relations Board, and says:

The findings of the Board as to the facts, if supported by evidence, shall be conclusive.

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. Now, let me put a hypothetical case to you. Do you mind my putting a hypothetical case to you?

Dr. FEINSINGER. Not at all, Senator.



Senator DONNELL. Suppose that we should have a case in which there are five witnesses, all of them credible men, in support of a particular proposition, and one witness who took exactly the contrary view—we do not know about his credibility—and the Board looked at the record and says, “We are satisfied with that one, and we will just take that one and decide on that basis.”

Now, do you regard the provision of the Wagner Act, as I have read it, to be sound and advisable, where the court is precluded from inquiring into the conclusiveness of the finding of fact when the facts are that the Board relied on 1 man out of 6, when the other five were against him? Do you regard that as sound?

Dr. FEINSINGER. May I consider your question as consisting of two parts?

Senator DONNELL. Very well.

Dr. FEINSINGER. First of all, the United States Supreme Court in the Consolidated Edison case said that this provision of the Wagner Act satisfied the requirements of the law, specifically constitutional and administrative law, as setting forth a proper criterion for the receipt of and passing judgment on evidence of an administrative agency.

Secondly, the United States Supreme Court has defined this test in the same case, and in numerous other cases, as meaning “credible evidence,” “substantial evidence,” and third, in answer to your specific question—hypothetical question—I have no hesitation in saying on the basis of established decisions that, of course, the Board could make that decision.

As a matter of fact, you will find decisions of administrative agencies in the field of workmen’s compensation, for example, in which the Supreme Court has sustained a finding in favor of one side, although all of the witnesses testified the other way. There is nothing novel about it, Senator.

Senator DONNELL. Well, now, may I ask you this question: Do you think, first, it is constitutional; second, that it is not novel; third, that it is in line with the procedure in similar cases?

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. All right.

Now, let us take that. Which one of these two provisions do you regard to be preferable on this subject of evidence? First, the provision of the Wagner Act that—

the findings of the Board as to the facts, if supported by evidence, shall be conclusive.

That is one; or the provision of the Taft-Hartley Act which reads:

The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

Which of those would you prefer as a lawyer and as a law teacher and as one who has come in contact with questions on evidence in all of these various subjects?

Dr. FEINSINGER. That is section 10?

Senator DONNELL. 10 (e).

Dr. FEINSINGER. 10 (e) of the Taft-Hartley Act.

Senator DONNELL. Of each act.

Dr. FEINSINGER. Yes.

The first part of the definition in the Taft-Hartley Act is no different from the definition in the Wagner Act as interpreted by the courts.

The only possible difference is with respect to the second part, "if supported by substantial evidence on the record, considered as a whole," and my answer would depend on what that means, and what it was aimed at.

Senator DONNELL. Well, of course, we would have to read the language here, would we not, and the court would pass on it by virtue of this language, perhaps assisted by any history of the legislation?

Dr. FEINSINGER. That is right, sir. There is a considerable history behind it.

Senator DONNELL. Very well. Perhaps, you would want to consider that more thoroughly than just in a cursory consideration. I take it, that is true; is it not?

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. Yes. It is a fact, it is not, Mr. Feinsinger, Professor Feinsinger, that there was a tremendous amount of criticism directed against the Wagner Act on the very point that I have made, namely, that the Board would accept the testimony of two or three men testifying on behalf of labor and would refuse to accept, in some extreme cases, perhaps, 15 witnesses on the part of management. There was a grave, tremendous criticism, whether justified or not, on that fact; was there not?

Dr. FEINSINGER. That is right, Senator.

Let me, if I may, on that point tell what is reported to have been an actual case in Mexico. I do not want to take up your time, but I think this illustration would indicate what I have in mind.

Senator DONNELL. Yes, sir.

Dr. FEINSINGER. This American and his wife went into a jewelry store in Mexico City to look at some jewelry, and they walked out without purchasing the jewelry.

The following day they received a bill for about \$1,000 worth of jewelry and they were very much upset and employed counsel.

Counsel, after hearing the story, did not seem to be perturbed at all. Finally, they got to court and the storekeeper produced three witnesses who testified that these Americans had taken this jewelry, and had not paid for it, and still counsel for the Americans did not seem to be disturbed.

When it got to be their turn, the Mexican counsel put on 10 witnesses who said, yes, they were there; they saw the Americans take this jewelry, order it, and pay for it. [Laughter.]

Senator DONNELL. Of course, you had a matter of perjury there and you are not advocating that type of judicial proceeding?

Dr. FEINSINGER. Neither one of us is.

Senator DONNELL. The point I am getting at, Professor, I take it, is whether or not there is any objection, so far as you see, to the Taft-Hartley Act coming right out and saying, as it does, "The findings of the Board, if supported by substantial evidence, shall be conclusive," rather than leaving the law in the condition it was in under the Wagner Act, when it simply said, "The findings of the Board, if supported by evidence, shall be conclusive."

There can be no objection to making it clear, as the Taft-Hartley Act does, whether there is any benefit or not; is that true?

Dr. FEINSINGER. Senator, to take your illustration, I certainly would not endorse a rule of evidence which said that if five witnesses testified one way, and one witness testified the other, that the Board must accept the testimony of the five witnesses.

Senator DONNELL. No; I would not, either. I would not advocate anything like that at all. But I would say that, if I may answer your proposition, I certainly would favor a rule under which a finding, in order to be conclusive, must be supported by substantial evidence rather than that a finding of a Board, in order to be conclusive, need be supported only by a scintilla of evidence, opposed to the great preponderance of the evidence in the case; and I think you, as a lawyer, do, too.

Dr. FEINSINGER. I will go this far with you, Senator, that the questions of evidence, the weight of evidence, the preponderance of the evidence, should be set forth in the statute administered and interpreted in the same way for the National Labor Relations Board as for any other administrative agency.

Senator DONNELL. Yes; I think that is a very sound position of yours, and the fact is, first, Mr. Feinsinger, is it not, as I think you have indicated, there was a tremendous amount of criticism, whether just or unjust, directed against the operation of the Wagner Act, on the point of evidence, to which I have referred. That is true, is it not?

Dr. FEINSINGER. Yes, sir; and the criticism would not have been satisfied: the criticism against the Board, would not have been satisfied by putting in the Taft-Hartley definition or any other definition.

Senator DONNELL. Have you heard any criticism of this, as I have referred to it, with respect to the operation of that sentence of the Taft-Hartley Act, which says:

The findings of the Board with respect to questions of fact, if supported by substantial evidence on the record, considered as a whole, shall be conclusive.

Have you heard any criticism of that at all?

Dr. FEINSINGER. Oh, yes; on the part of labor lawyers.

Senator DONNELL. On the part of labor lawyers?

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. I see. They think the word "substantial" and the words "substantial on the record, considered as a whole," should be omitted, is that right?

Dr. FEINSINGER. They say they do not know until the court interprets the change. Obviously, this change was put in here for some purpose, not merely to have a better-sounding test. I do not think that it was passed to benefit labor, and they would like to see what the courts make of this provision—the United States Supreme Court. If it involves no substantive change in the rule of evidence, they are satisfied. If it involves a substantive change they would like to know what the change shall be.

Senator DONNELL. Very well.

Now, Professor, in the concluding portion of your statement, you make four very interesting suggestions. In the first place, and I refer you to page 2; that is, of the second part of your statement.

Dr. FEINSINGER. That is really page 11. Perhaps, to avoid confusion, Senator, if you would renumber the last three pages, 10, 11, and 12, it would be helpful.

Senator DONNELL. That would make them very much simplified. That will be 10, 11, and 12.

Dr. FEINSINGER. Ten is the one which has Roman No. 7 at the top; 11 is the one which starts with "the Board bargaining."

Senator DONNELL. Yes; that is fine. I have followed your suggestion. I think that simplifies it.

Senator NEELY. Senator, would you yield for a very brief question?

Senator DONNELL. Yes.

Senator NEELY. Senator Donnell just asked you about a certain matter and you said that, in your opinion, labor did not think that that provision of the Taft-Hartley law had been written in behalf of labor, or words to that effect.

Dr. FEINSINGER. That is correct, sir.

Senator NEELY. Do you know any laboring man or woman who believes that any provision of the Taft-Hartley law was written for the purpose of serving labor.

Dr. FEINSINGER. Well, I do not know the opinion of every laboring man, Senator. I think that there are a great many more laboring people who entertain that view than is commonly advertised.

Senator NEELY. But do you know of any who believe that the Taft-Hartley law was passed in order to benefit labor?

Dr. FEINSINGER. That the law was passed in behalf of labor? Let us get the record straight: I took it that the question was whether I knew of any laboring man who felt that any part of the Taft-Hartley Act was passed in the interest of labor.

Senator NEELY. That is my question. I am not asking you whether you know them all, but whether you know any toiling man or woman who believes that the Taft-Hartley law was enacted for the benefit of union labor.

Dr. FEINSINGER. Certainly, the general consensus of union opinion was that it was not passed to help labor, and the general consensus of laboring people generally, whether members of unions or not, and this is my observation, for what it is worth, I prefer to speak only on the basis of what I have observed, Senator—

Senator DONNELL. Dr. Feinsinger, I take it that you have made no study of how many or what proportion of either labor or the general population at large have actually ever read the Taft-Hartley Act? Am I correct in that?

Dr. FEINSINGER. You are correct, Senator.

Senator DONNELL. And your judgment—is it your judgment that any very considerable proportion of labor or the general public has ever read the act?

Dr. FEINSINGER. In its entirety?

Senator DONNELL. Well, yes, in its entirety.

Dr. FEINSINGER. Oh, I do not think any great proportion of the general public or of the laboring class or any other class has read the statute in its entirety; and I know this, that even those among my students in labor law who have read it, do not quite understand it.

Senator DONNELL. Well, now, Professor, one other question: You mentioned something about the fact—I do not know how you put it—but a great proportion of labor thinks that the Taft-Hartley Act was not passed in its interest. That is about what you said, was it not? Substantially what you said?

Dr. FEINSINGER. Substantially, it is my opinion, yes, sir.

Senator DONNELL. Very well.



Mr. Green, William Green of the American Federation of Labor, was on the stand the other day, and he testified that at some kind of a poll, I think it was, of the American Federation of Labor, consisting of 8,000,000 people who voted, they voted 9 to 1 against the Taft-Hartley Act.

Is it your idea that is probably about a correct proportion of those who favor it, and those who did not favor the Act?

Dr. FEINSINGER. Well, Senator, my confidence in polls has been somewhat shaken by recent events.

Senator DONNELL. Yes. [Laughter.] But I did not ask you about that. I wondered [laughter] whether or not you were able to tell us as to whether or not you think that is probably about the correct proportion.

Dr. FEINSINGER. I would not venture an estimate.

Senator DONNELL. Of course, on that basis, Mr. Green's idea would be that 9 out of 10 of the 8,000,000 were opposed to the Taft-Hartley Act, which would mean, of course, that 1 out of 10 was not opposed to it; in other words, 800,000 persons of the 8,000,000 were not opposed to it if those figures be taken as correct.

Now, I want to just ask you very briefly about these, one or two of these points, the four points.

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. The first point is that you advocate reestablishing in simple and clear terms the basic philosophy of the free collective bargaining as the cornerstone of our national labor policy; and then you say, in effect, this means the reenactment of the Wagner Act, entangled in the present law with many irrelevant or contradictory provisions.

You do not mean to reenact it with all of these irrelevant or contradictory provisions, which you say are entangled within it?

Dr. FEINSINGER. That is right; yes, sir.

Senator DONNELL. May I ask you how you would express in words, whether you think this is the effect or not, how would you express it in words or, in other words, in simple and clear terms, the basic philosophy of free collective bargaining as being the cornerstone of our national labor policy, in language any clearer than these two sentences of the Taft-Hartley Act, section 8 (a) :

It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

And:

It shall be an unfair labor practice for a labor organization or its agents to refuse to bargain collectively with an employer, provided it is the representative of his employees, subject to the provisions of section 9 (a).

Do you know of any clearer language to express in simple and clear terms this basic philosophy of free collective bargaining than these two sentences that I have quoted to you from the Taft-Hartley Act?

Dr. FEINSINGER. Senator, I do not want to quibble. I want to give you a fair answer.

I think we will probably be in agreement on this. Those two sentences do not set forth the policy. They merely set forth the means by which the policy should be effectuated.

The statement of policy is in the declaration of policy, in the preamble of the act. All of the unfair labor practices in the Wagner Act, Senator, were merely designed to remove obstacles to free collective bargaining. They do not set forth the policy. It is not the policy of this country to say to an employer or a union, "You shall not do this," and "You shall not do that," and "You shall do this," and "You shall do the other thing."

It is the policy of this Government and this Congress up to 1947, to say, "We want to see genuine collective bargaining. In order to accomplish that objective, we will remove the obstacles to collective bargaining."

Senator DOUGLAS. Senator Donnell, I did not have a copy of Mr. Feinsinger's statement but I made some rough notes, and if my memory serves me correctly he said that he felt the obligation to bargain collectively should be reciprocal.

Dr. FEINSINGER. That is right.

Senator DOUGLAS. For both organizations of labor and of employers. That is the way I understood it.

Senator DONNELL. He does not say it is; he may have interpolated. But assuming that it is true, and I quite agree with it, I make the point, however, and I shall not belabor it or argue it back and forth, but I would like to make the point, first, in response to his statement, that it is not the national policy to say, "You shall do this," and "You shall not do this."

I desire to point out and call his attention to the fact that the Wagner Act itself said:

It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees.

In the second place, that on the reciprocal basis, that Senator Douglas has referred to, the Taft-Hartley Act, whether it fails or whether it succeeds in its efforts, certainly endeavors, by the language that I speak of, to make it an unfair labor practice either for the employer or for the employees to refuse to bargain collectively. So that I take it on your reciprocal point to which Senator Douglas has addressed himself is certainly sought to be covered in the language of the Taft-Hartley Act.

Senator DOUGLAS. Will the Senator permit me for just a minute?

Senator DONNELL. Yes.

Senator DOUGLAS. It seems to me the omission of this clause from the Wagner Act was certainly a technical error because it was never thought at the time that labor would refuse to bargain collectively.

Senator DONNELL. May I say there to the Senator, before I forget it, I cannot agree for a minute with that proposition because I think the whole tenor of the evidence here is to show that the Wagner Act was never intended to provide any prohibitions or duties against or upon labor. It was a prohibition and duty with respect to management in all instances.

Senator DOUGLAS. Since the Senator and I seem to be engaging in a discussion, and I, perhaps, provoked it, may I say, to make the record clear, that speaking for myself, I believe that this obligation should be mutual and reciprocal.

Senator DONNELL. I am pleased to hear the Senator say that.

Senator DOUGLAS. And that organizations of labor should have the same obligation to bargain collectively which employers have.

Senator DONNELL. Yes; we had a quotation in the testimony here yesterday with respect to Mr. Green himself. Not that he testified himself on it, but the quotation was substantially, as the Senator has expressed himself today, not that the Senator is taking his language or he the Senator's, but the thought is the same, and I am certainly glad the Senator makes the statement.

Senator DOUGLAS. I think any fair-minded man would agree to it.

Senator DONNELL. Yes.

Senator DOUGLAS. That is not the reason why we object to the Taft-Hartley law. That is the flower in what is otherwise a very poor suit.

Dr. FEINSINGER. I might say that I did interpolate, did interpolate in my testimony, this morning a suggestion that the duty should be reciprocal.

I have never had the slightest doubt that it should be, as Senator Douglas correctly points out; the reason why no such duty was included in the Wagner Act was that it was assumed as a premise that since unions are organized for the purpose of collective bargaining, it certainly would require no law to make them bargain.

Now, I understand situations have arisen in which employers have, in some cases, I think justifiably, complained that they are given a contract with a "take it or leave it" attitude.

Senator DONNELL. You would have no objection——

Dr. FEINSINGER. No; I would have no objection.

Senator DONNELL. You would have no objection to an insertion of a provision of an attitude of that sort or an act of that sort being illegal?

Mr. FEINSINGER. That is right.

Now, the reason I did not put it in the semiformal draft of the paper which I completed at 2:30 this morning, Senator——

Senator DONNELL. We appreciate your doing it.

Dr. FEINSINGER. You see, I had not anticipated coming down here to make a case for anybody or against anybody. The reason I did not spell it out was this: It is more than just a problem of semantics.

Senator DONNELL. By the way, I want to confess my ignorance right here and now. I do not know what "semantics" are. I have heard of it all through the testimony. Now, what is a "semantic"? [Laughter.]

Dr. FEINSINGER. A semantic is like a schmoos.

Senator DONNELL. I am going to invite somebody else on this who does not know either—Senator Smith, and he is from Princeton University.

Would you tell us what they are?

Senator MURRAY. Tell us what they are.

Dr. FEINSINGER. When you engaged in a bandying of terms with a secondary connotation where two people can use the same phraseology and mean entirely different things. Some words in England are fighting words; over here we do not pay any attention to them at all.

Some words are fighting words over here, and I could tell you a story to illustrate my point, perhaps, much better, if you would like to hear it, Senator.

Senator DONNELL. That is all right.



Dr. FEINSINGER. Well, this family down South, this colored family, that saved all of its money to send their boy to Harvard—he was a very bright fellow—and they were very proud of him.

They heard nothing from him for a long time until one day they got a letter from him, and they opened it, turned it one way and another. They could not read it. Finally the wife said, "Why don't you take that down to the corner grocer and ask him what it says?"

He did, and the corner grocer opened it and this is the way he read it: "Dear Folks: Please send me \$10. Your son, Arthur."

Senator DONNELL. That sounds natural. [Laughter.]

Dr. FEINSINGER. Well, it just about broke that poor old man's heart, and when he came back and told his wife about it, it just about broke her heart.

Here, they had saved all their money to send this fellow to Harvard, and that is the kind of attitude he displayed.

Finally, the old lady said, "I think you did not read that letter right. You take that down to the colored preacher and ask him to read it."

He took the letter down there and the preacher opened it, and put on his specs, and this is the way he read it: "Dear Folks: Won't you please send me \$10? Your loving son, Arthur." "Oh, that is different."

[Laughter.]

Senator DONNELL. Well, I am glad you gave us that definition. I believe I will remember it now.

I was about to ask you to tell us the meaning of another word in Washington, "intransigence."

Dr. FEINSINGER. "Intransigent," that is what the Taft-Hartley Act says labor is and management ain't. [Laughter.]

Senator DONNELL. Now, as regards Senator Douglas' point about this being a technical omission; I think he used that word; I do not believe that it was a technical omission. In fact, Mr. Green himself, as I remember in his own testimony, his idea was that there was no reason why labor should not bargain. He wants it to bargain collectively, and he thinks that is what the unions are created for, and he thinks it is unnecessary to have it in, but my thought is that it is proper; maybe I am wrong, and maybe I am right, but you and Senator Douglas and I, I take it we all agree there ought to be a reciprocal obligation on labor and management. That is right, is it not?

Dr. FEINSINGER. That is right, Senator. I think I ought to add there in all fairness, and it explains my hesitancy in making a blanket statement, it ought to be in this act. Industrial life is not that simple. If you mean that a union, as a general proposition, should have no right to come in and lay a contract down on the table and say, "Take it or leave it," I agree with you, and I am sure the Senator does.

If you mean that an industry which has always maintained uniform wages and conditions throughout, both before unions and since unions, that the obligation to bargain on the part of a union means that they must make concessions over and above those made by the industry as a whole, then I think you are talking about something quite different.

Senator DONNELL. Well, I do not think the term "bargaining collectively" necessarily means that anybody has to make a concession.

Dr. FEINSINGER. That is right; and if the Board administering such a statute takes your approach, I have no fear, Senator.



Senator DONNELL. Thank you, sir.

Now, the third point, and I hasten on because I must not monopolize this time here this afternoon, the third point that you make in these four points is that you—Senator Smith has a comment here which is excellent.

Senator SMITH. I would like to call your attention, Professor, to the fact that in section 8 (d), after they discuss the obligation to bargain collectively, are these words, "but such obligation"—that is, the obligation to bargain collectively—"does not compel either party to agree to a proposal or require the making of a concession." I think that clarifies the point that we are discussing.

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. Thank you very much.

Senator SMITH. You agree to that?

Dr. FEINSINGER. Yes.

Senator DONNELL. That is a wholesome provision.

Dr. FEINSINGER. I think so.

Senator DONNELL. Thank you.

The third point that you advocate is that we, that is Congress, "authorize the establishment of a commission on labor-management relations to be appointed by the Congress"—

Dr. FEINSINGER. By the President, sir.

Senator DONNELL. I think you inserted right at that point, although it does not appear here, something similar to the Royal Commission.

Dr. FEINSINGER. By the President, Senator; you said "Congress."

Senator DONNELL. By the President. I should have said that.

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. "Authorize"—that is Congress, you mean, should authorize "the establishment of a commission," that is right, is it not?

Dr. FEINSINGER. That is right.

Senator DONNELL. On labor-management relations to be appointed by the President, and then I think you inserted the words "similar to the Royal Commission."

Dr. FEINSINGER. That is right.

Senator DONNELL (reading):

With instructions to report within a year or such longer time as may be required. Such a commission should consist of qualified, impartial, public-spirited citizens who can be relied on to make a careful, comprehensive, and competent study of all aspects of the problems assigned in the framework of sound long-range national policy—

as you, Professor Feinsinger, have attempted to define it.

Now, I see your point, but may I just ask you a question or two? In the first place, how would you go about—I am going to have to just say a few sentences to lay the point before you.

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. How would you go about, with human nature being what it is, guaranteeing that such a commission would consist of impartial persons, and may I amplify that question just a little this way:

Now, the President of the United States will undoubtedly seek to be honorable and upright in his action, but after all, he has some thoughts on this subject, if I am not mistaken, and he expressed himself very strongly many, many times in the campaign as being against the principles and content of the Taft-Hartley Act. Therefore, it

would be quite difficult for him, I would judge—I think it would be for me, at any rate—to select persons who are absolutely impartial. It would be very difficult to do it.

Then, in the second place, I would like to ask you whether or not it would not be very difficult to inspire public confidence in such a commission because, after all, you are going to have various shades of opinion in it, and somebody is going to be saying, "Well, this commission is not impartial; it is weighted on the side of labor," as many, many people would think the President naturally, the present President, at any rate, would weight it; and I make no reflection on his honor in saying that.

But how would you inspire public confidence in such a commission? Now, on those two questions, if you have noted them, I will be obliged if you would give us your answer.

Dr. FEINSINGER. Yes, I think they are proper inquiries, Senator. I think the answer is pretty clear. I know you do not mean to suggest that we do not have in the United States of America three or five qualified, impartial public-spirited citizens who can be relied on to make a careful, comprehensive, and competent study. I know you do not mean that.

Senator DONNELL. Oh, no; I do not.

Dr. FEINSINGER. But I think that answers both questions. But I will go on to say this: We have had commissions of this nature, commissions investigating problems of industrial relations in the past. Every one of those commissions has made a constructive contribution to the country. Not one of those commissions has ever escaped criticism from the left or from the right on the basis that one or more members were impartial. That criticism did not make them partial. Nobody accepts a public responsibility, and I know you know this from experience, nobody accepts public responsibility with a firm determination to call them as he sees them without invoking criticism from various sources. That does not deter you and your colleagues from doing what you think is the best thing to do under the circumstances.

Senator DONNELL. That is your answer to the two questions?

Dr. FEINSINGER. Yes.

Senator DONNELL. Mr. Feinsinger, I want to mention this: If your plan were adopted, that is to say, of having this commission appointed, you have provided, I believe, that the commission should report within a year or such longer time as may be required, and your first point being the reenactment of the Wagner Act with merely these noncontroversial amendments put in, which I mentioned in point 2, and perhaps other noncontroversial amendments.

But we would have a situation, if your two suggestions were carried out, where we would abandon the Taft-Hartley Act and reenact the Wagner Act with some noncontroversial amendments in it, and leave this whole thing in that condition for a year or such longer time as may be required, and then we would have a commission to be appointed by a President who has already condemned very strongly the Taft-Hartley Act, and that commission would work for a year and, perhaps, considerably longer while the Wagner Act, with those noncontroversial amendments in effect added to it, would be in effect. That is your suggestion, is it not?

Dr. FEINSINGER. Well, I think it is more than that, Senator. In the first place, I am confident that President Truman, like most Presidents, recognizing the significance of the undertaking of this kind, would appoint impartial people, the best people that could be obtained.

I think the record of the President's appointments since he has been President, of people to serve on various boards in labor disputes, indicates that the President can be trusted to pick the right men for this job.

Secondly, you are talking about a long-range policy. I have indicated that in the Taft-Hartley Act there are the germs of a long-range policy which are inconsistent with the notions that everybody in this room has as to the meaning of a democracy, and particularly an industrial democracy.

If we are legislating on long-range bases, and not for 1949, I see no harm to be done by marking time for awhile. I have also suggested, in addition to the two or three specific provisions, now that we add the reciprocal duty to bargain, that the President take some action now or rather that the Congress authorize the President to take some action now for the handling of national emergency disputes, and I might add one other thing: You have a joint committee, the so-called watchdog committee which, I think everybody knows, is being buffeted about by political winds. No matter how good a job they are trying to do——

Senator DONNELL. Do you think they have tried to do a good job?

Dr. FEINSINGER. I certainly do.

Senator DONNELL. Do you think they have done a good job?

Dr. FEINSINGER. In some respects, yes, sir.

Senator MURRAY. They have not completed it yet; we are completing a report.

Senator DONNELL. A minority report.

Dr. FEINSINGER. I say they are doing their work in the arena of political controversy. I think that is an accurate statement.

Now, my suggestion—I have not gone into details here—if I were asked to elaborate on it, I would say continue your committee or committees that have——

Senator DONNELL. That is the Joint Labor-Management Committee?

Dr. FEINSINGER. Yes.

Senator DONNELL. That is the one under the Taft-Hartley Act, continue that?

Dr. FEINSINGER. I do not care whether it is that one or some other. I say Congress must, as a practical matter, act in these matters through committees.

Senator DONNELL. Very well.

Dr. FEINSINGER. Whether it is this committee or some other or whether the personnel is the same or not, my suggestion was not to eliminate the congressional committees from this area, but to have this commission work with those committees, do you not see? I am not suggesting that they should be formally attached or informally attached. I think they should be responsible directly to Congress and the President, but I suggest that they cooperate with committees established by Congress for that purpose.

Senator DONNELL. Now, Professor, and again I will ask your pardon and that of the committee for taking much more time—I think this is quite important and I will ask you a few very brief questions.



You speak of this being an impartial committee, this commission that you advocate.

Dr. FEINSINGER. That is right.

Senator DONNELL. Would you say that labor, on the one hand, is partial, and management is partial to their respective contentions?

Dr. FEINSINGER. I think they are human, and they are partial.

Senator DONNELL. Therefore, you would not have representatives of labor or management on that commission.

Dr. FEINSINGER. Not in that capacity, although I conceive of business men and union men serving on the committee in a public capacity. This notion that a man is disqualified from being a member of the public because he happens to represent management or labor is foreign to my thinking.

Senator DONNELL. But I was getting to your thinking. You said the commission should consist of impartial citizens, and I understood you to say that both management and labor would be partial. That is natural, is it not?

Dr. FEINSINGER. I see what you are driving at.

Senator DONNELL. Therefore, you would have to have a commission that did not have either management or labor on it.

Dr. FEINSINGER. Not necessarily. My proposition is couched—your comment is perfectly sound—but I have no strong feeling that it should be an all-public commission or a tripartite commission. I think the balance of power, if it should be a tripartite commission, should lie with the so-called public members.

Senator DONNELL. The public?

Dr. FEINSINGER. Yes, sir.

Senator DONNELL. The public members.

Of course, as I read your proposition here, such a commission should consist of qualified impartial, and so forth——

Dr. FEINSINGER. Yes.

Senator DONNELL. Citizens. I would understand that, bearing in mind human nature as it is, you would eliminate both labor and management which probably would restrict the personnel very materially, probably in large part, and I do not say this critically, to members, perhaps of the teaching profession, professors or gentlemen who are not in either labor or management.

I am justified in that interpretation of what you have written here, Professor?

Dr. FEINSINGER. As it reads, you are, but I want to make the record perfectly clear that I think it would be a matter for Congress to decide if it thought this notion worth considering at all.

I can see some very good arguments for putting on labor and industry people. I certainly know a number of industrialists and a number of labor representatives who, I think, are impartial in the broadest sense of the term.

Senator DONNELL. Of course, you take the witnesses who come before us. While I have no doubt that they have tried to give us a fair picture, each man is just alike, if I can just confine it to myself—I have my prejudices, of course, and I take it some other people do. It is true it would be pretty hard for them to be totally impartial.

Dr. FEINSINGER. Yes.

Senator DONNELL. Then, I must pass on to the last point, and I will not take much more time. You say pending the report of that com-



mission which you say might take a year or such period of time, with these noncontroversial amendments, which would be the law—pending that report, 12 months, 18 months or more, in the future, you would have Congress pass enabling, not restrictive, legislation, which would enable the President—I am quoting from your statement—through the discretionary exercise of a range of powers adaptable to particular cases as they arise, and based on the principle of persuasion rather than force—

Dr. FEINSINGER. That is right.

Senator DONNELL. That is what the Thomas bill does here. It bases its provision on the principle of persuasion rather than force.

Do you think, Mr. Feinsinger, that, take for instance in the coal industry where we had Mr. John L. Lewis up in the public eye, and we went through an injunction suit, two of them, in fact, and tremendous fines imposed before compliance of the court's orders could be secured, do you think Mr. Lewis—if I may be pardoned for the use of that name here—would respond very well to the principle of persuasion rather than force? [Laughter.]

Dr. FEINSINGER. Over the long pull, I think you will get more coal mined by the use of persuasion than by the use of force.

Senator DONNELL. But in the particular case that we have had so far, Mr. Lewis responded neither to persuasion nor to force until the strong arm of the court imposed a fine of millions of dollars on his organization and thousands of dollars on him. That is correct, is it not?

Dr. FEINSINGER. It is a fact that the court imposed severe penalties on Mr. Lewis and his union.

Senator DONNELL. And he did not act to prevent these strikes until after those penalties were imposed, and he was compelled by order of the court to act in accordance with his order, is that not so?

Senator NEELY. Would you yield for a short question?

Senator DONNELL. After he answers this question I will.

Dr. FEINSINGER. I think that is correct, Senator. I do not remember the exact timing, but I think that generally you are correct.

Senator DONNELL. Very well. I will yield the floor, Senator, if I may. I do not want to take more time chargeable to our side of the table here, and I am quite willing, with the right of Senator Smith to make such further examination as he desires, to yield to the Senator from West Virginia at this moment if it is agreeable to Senator Smith.

Senator SMITH. If the Senator wants to ask a question. I just have a few brief questions to ask the witness. Would you rather I go ahead?

Senator NEELY. Yes, I will ask my question in my own time.

Senator SMITH. Professor, having been in a university in a similar position to yours for some time I am sympathetic to your attempt to present a fair approach to these questions.

Dr. FEINSINGER. Thank you, Senator.

Senator SMITH. You will probably agree with me that these debatable questions do involve important issues of national policy.

Dr. FEINSINGER. Yes, sir.

Senator SMITH. And as one of those who participated in the legislation of the Taft-Hartley Act, I think it is fair to ask you whether you have any question of the sincerity of those who tried to meet

some of these problems and deal with them in a successful way, whether or not you agree with the conclusions.

The suggestion has been made that the Taft-Hartley Act is, slave labor, is vicious and was punitive, and I just want to simply raise the question. I might say a person who is in a similar position as I have been in, when you try to deal with these things on an intellectual approach, does not gain anything in calling names and attributing wrong motives when you get results. I am troubled by the fact we seem to be heading into warfare here, to a division between the workers in the country and the employers, whereas I have been seeking from the beginning of these hearings to see if we cannot get together in a statesmanlike way and take up issue by issue and find the right answer.

Now, I congratulate you on your statement. I think it is presented with sincerity from the standpoint of a man who has made a long study and trying to find the answer. That is the approach I am trying to make, and I would just like to have your assurance that you feel that is the right approach.

We do not gain anything by calling names and attacking legislation which was sincerely passed—calling it slave labor, for example. I do not think you would say the Taft-Hartley Act was a slave-labor act, whether you agree with me or not.

Dr. FEINSINGER. Again, we are in the field of semantics, Senator. I subscribe entirely to your philosophy, as you have just stated it.

Senator SMITH. From that angle, I want to ask you a question at this point about this closed-shop issue, which to my mind is one of the most difficult ones we have got.

Dr. FEINSINGER. That is right, Senator.

Senator SMITH. My guess is, if you set up the Commission you are discussing, you would like to refer the whole review of that problem to that Commission. I assume that is what you are driving at.

Dr. FEINSINGER. Absolutely.

Senator SMITH. And I am pretty sympathetic with that approach, because I do not feel myself competent to deal with it, but is it not true that if we accept the principle of the closed shop, we are looking forward to the time when conceivably all industry may be organized in a closed shop where they all deal only through the closed-shop principles, although at the present time there are not more than approximately 14,000,000 or 15,000,000 of our industrial workers in unions, and there are probably twice as many who are outside.

If we go to a closed shop, do we not have a responsibility as legislators, to think in terms of open unions, and the kind of regulations that will protect the individual American citizen who wants to earn a living and having a right to earn that living, and if he is compelled to join a union in order to earn a living, to be protected in what regulations the union lays down for his membership.

That is one of the controversies here, because the point has been made that no control of any kind should be placed over a union as to its internal organization. I am very much troubled by that question, and I would like to have your objective approach to it.

In other words, if we are going to have a closed shop, must we not think in terms of an open shop and some legislative responsibility of seeing to it that the man who has to join that union is protected in the matter of dues, assessments, democracy of the union and his own

protection within the union to see that his individual rights are taken care of?

DR. FEINSINGER. Senator, I think that the sort of a Commission that I have in mind could make a real contribution to a break-down of the problem. It is not a single problem. I think that is one of the difficulties here.

The closed-shop issue is not a single issue or a simple issue, and I think further that the Commission, in addition to breaking the problem into its various components, might come up with some suggestions as to how to handle the different problems, and more than anything, I think that if the Commission were to receive the cooperation of the unions, we might get certain voluntary action on the part of the unions, because you are talking about the internal affairs of the union and about collective bargaining, which, in the long run, would produce much more constructive results than any legislative sanction or prohibition would accomplish.

That is my thought.

Senator SMITH. I agree with you. We cannot legislate happy human relationships, such as management-labor relationships bring about, but I am trying to see the place in which our legislative responsibility comes in, and I am groping for light in that field, and I think that has been the basis of our study.

DR. FEINSINGER. Yes.

Senator SMITH. Where does it begin; where does it stop? But it seems to me with the Wagner Act which had the result of greatly increasing the number of members in the union and thereby increasing a great power in this country on labor's side, where before there had been too much power, I admit frankly, on management's side, we have two great powerful forces suddenly coming into juxtaposition with the danger of a clash, and whether to protect the public or the individual worker we do need some legislative action. That is my problem.

DR. FEINSINGER. There are a great many sincere people like yourself who are worried about the problem, regardless of the merits. I merely want to point this out.

You have just suggested that the closed shop and union power are necessary corollaries. That is not true. Labor has much greater political power in Europe, in countries that do not have the closed shop, and in countries where the degree of organization is less than the United States of America.

The notion that the two go hand in hand I think has not been proved. I think the problem of the closed shop has to be separated out from the problem of power, because I do not think that the two things are related.

I suggest that at least three incidents of the closed shop that had no relation to power, the problem of providing employment agencies in certain casual industries, the problem of free riders that Professor McCabe talks about, the problem of undermining the status of established collective-bargaining agencies, all those things are covered under the single tent of the closed shop.

I think it is a problem. I think it is a variety, a series of problems that are required rather than close analysis. I can conceive of some unions that would be very happy to give up the closed shop under certain conditions, and I might add just one thought. I do not object to power as such or to bigness as such.



Senator SMITH. I do not either.

Dr. FEINSINGER. If there is along with it the same degree of responsibility.

Senator SMITH. That is right.

Dr. FEINSINGER. I do not think that you ought to hold people liable unless they are responsible. I do not think you ought to hold them responsible unless they have power.

The Taft-Hartley Act has increased the liability and responsibility of unions and at the same time has deprived unions of power, specifically in the field of discipline of their own members. That is a problem that ought to be studied by the Commission as well as the other problems.

Senator SMITH. Well, you will admit those are all in the area of the controversy?

Dr. FEINSINGER. Yes, sir.

Senator SMITH. In the whole field, and we are trying sincerely to find the answer to those things.

Dr. FEINSINGER. I have no doubt as to your sincerity or as to the sincerity of anyone else in this room, Senator.

Senator DONNELL. I just want to ask one question, if I may interpolate.

Referring to this Commission that you advocate be appointed, I take it, Professor, that you recognize it is entirely possible that even after the Commission had worked for a year, a year and a half, 2 years, on it, that there would be a majority report and a minority report. That is entirely possible, is it not?

Dr. FEINSINGER. I should think so, and it would not necessarily be an unhealthy result, because, as you pointed out, Senator, in a democracy you can anticipate varying opinions in a field as vital as this, and involving human relations, and it should be that way.

Senator DONNELL. I just wonder where we are going to be left if we have a minority and a majority opinion of 5 to 4, how are we going to know which one is right?

Senator SMITH. Just one more question, and I am through.

You suggested going back to the Wagner Act. Do you mean by that, going back to the Wagner Act as amended by the pending Thomas bill, or would you not deal with boycotts today and jurisdictional strikes, in legislation?

Dr. FEINSINGER. I would deal with jurisdictional strikes.

Senator SMITH. Would you deal with boycotts? You have not mentioned that. We are very much troubled with that question.

Dr. FEINSINGER. And small wonder. I have been teaching the subject of the law of boycotts as part of the subject of labor law for over 10 years now, and I am probably more confused now than I have ever been.

Senator SMITH. Then I can be excused, if I am confused, after your long study, because I admit that I am confused with the boycott.

Dr. FEINSINGER. That is right.

Senator SMITH. That is all I have in mind.

Dr. FEINSINGER. Thank you, Senator.

Senator HILL. Doctor, am I right in the understanding that you served at different times with the Conciliation Service, appointed for certain jobs of mediation by the Secretary of Labor or by the Director of the Conciliation Service?



Dr. FEINSINGER. That is right, sir.

Senator HILL. Would you mind briefly giving the committee some of the disputes in which you acted in that capacity?

Dr. FEINSINGER. Yes, sir. The maritime dispute on the west coast.

Senator HILL. When?

Dr. FEINSINGER. I think I could stop right there. That was 1946, Senator. The sugar strike and the pineapple strike in Hawaii, and the longshore dispute which did not involve a strike in Hawaii. Those are the major disputes to which the Secretary assigned me.

Senator DONNELL. That is the Secretary of Labor?

Dr. FEINSINGER. This was Secretary of Labor Schwollenbach, yes, sir.

Senator HILL. Did you devote some time to those disputes?

Dr. FEINSINGER. I did, sir.

Senator HILL. You did. As I recall, we have had no more controversial strikes than those strikes; is that true?

Dr. FEINSINGER. They were controversial strikes.

Senator HILL. Highly controversial.

Dr. FEINSINGER. They were very controversial strikes.

Senator HILL. In other words, from the standpoint of a mediator, a man could not have had a more difficult job, could he?

Dr. FEINSINGER. Well, comparisons are odious, but those were about as difficult strikes as I would care to get into.

Senator HILL. Well, now, the fact that you were appointed by the Secretary of Labor, acting really under the Department of Labor, did that give you any thought or any idea that you were not to be wholly and entirely impartial as between the controversial sides in the matter?

Dr. FEINSINGER. No; the thought never occurred to me, Senator.

Senator HILL. On the other hand, you went about your work with the idea of being wholly and entirely impartial, did you not?

Dr. FEINSINGER. Yes; I believe so.

Senator HILL. Well, now, did you find that the fact that you were appointed under the Department of Labor by the Secretary of Labor, that it in any way affected your capacity to act as mediator?

Dr. FEINSINGER. No; I do not think so.

Senator HILL. Do you think it in any way affected you, we might say, persuasion so far as the employer was concerned?

Dr. FEINSINGER. Well, I think the Secretary and the employer and everybody were concerned with one problem, how to get the men back to work under terms and conditions that were acceptable by both sides.

Senator HILL. You do not think the employer felt that because you came out by appointment of the Secretary of Labor that you had any biases or prejudices in the matter so far as he was concerned?

Dr. FEINSINGER. I do not think so.

Senator HILL. Did you receive full and complete cooperation from the employer in your job of mediation?

Dr. FEINSINGER. Yes, I did.

Senator HILL. You did. I noted that in your original statement you made no comment on Mediation Service. Having had the experience that you have had in these highly controversial strikes, would you care to give the committee the benefit of your judgment as to where this Conciliation and Mediation Service ought to be?

Dr. FEINSINGER. Well, Senator, let me preface my remarks, if I may, by a statement that the problem is complicated because of the fact that my good friend Cy Ching, whom I admire very much, is head of the present Service.

Cy is a very simple and direct fellow, but he happens to be complicating this particular issue. He has done a very outstanding job. I think, Senator, he would have done an outstanding job in the Department of Labor if the Service were there. As far as that goes, I think that Cy Ching would have done an outstanding job if the Conciliation Service had been attached to the desk for Far Eastern Affairs in the Secretary of State's office.

Senator HILL. In other words, you think his job would have been just as effective in the Department of Labor as it was out of the Department of Labor. Is that correct?

Dr. FEINSINGER. As far as Cy Ching is concerned; yes. He is a very unique person. There are not very many like him, and the difficulty in all the discussion that I have seen on this subject pro and con is that the discussion revolves about the fact that Cy Ching has done an excellent job. I would be the first to admit, though, that his predecessors from John Steelman down had done an excellent job in the Department of Labor.

Senator HILL. Let me ask you this question—the chairman has just suggested that he is way behind on his schedule. He would like for us to conclude this examination as soon as possible.

I want to ask this question, Would you, or would you not, think that the fact that a mediator came out to do a job by appointment of the Secretary of Labor, therefore was under the Secretary of Labor and in a way the Secretary of Labor had a responsibility for the job he was to do, might be helpful in giving him a prestige that the mediator otherwise would not have?

Dr. FEINSINGER. Well, I will say this: Eliminating personalities, an appointment by the Secretary of Labor to mediate carries with it, he being a Cabinet officer, a good deal more prestige than an appointment by the Director of Conciliation, whether it is within the Department of Labor or outside the Department of Labor.

Senator HILL. When a mediator goes into one of these tough controversial cases, would not prestige be quite a factor?

Dr. FEINSINGER. It is a tremendously important factor. Sometimes it evaporates when people find you out, find out that you have prestige but not much else on the ball.

Senator HILL. Prestige is a factor, then, provided the man has the capacity to do the job; is that not true?

Dr. FEINSINGER. Oh, absolutely; sure. Just do not pay any attention to that flippant remark of mine. The answer is "Yes," Senator.

Senator HILL. Mr. Chairman, in connection with my questions of the witness about the Mediation Service, I guess it is in the record that there are only two lines I would like to read to get the quotation exactly from the organic act crediting to the Department of Labor in setting up the position of the Secretary of Labor. I quote from the act:

The act also authorizes the Secretary of Labor "to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace require it."

In other words, the basic act that brought the Labor Department into being imposed upon the Secretary, as one of his duties, to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace require it.

Senator MURRAY. Senator Neely.

Senator NEELY. Let me briefly refer to a question that Senator Donnell asked about the coal strike and the heavy fines that were imposed upon the miners and Mr. Lewis. In the first case, the union was fined \$700,000 and Mr. Lewis was fined \$10,000. In the second case, these fines were doubled. I understood the Senator to say, in effect, that the coal strike was not ended until after those fines had been imposed.

Mr. William Green, president of the American Federation of Labor, stated here a few days ago that the strike was terminated not by the imposition of fines, but by the acceptance by the operators of the very contract that Mr. Lewis had originally asked them to sign. We have found in West Virginia, as Mr. Lewis has frequently said, that we cannot dig coal with bayonets. Labor disputes must be settled in some other way.

Dr. FEINSINGER. Yes, sir.

Senator NEELY. If you want to achieve humanitarian results.

I express my personal, deep appreciation of the brilliant manner in which you have expounded your philosophy, Dr. Feinsinger.

Dr. FEINSINGER. I am very grateful.

Senator NEELY. I have for a number of years participated in hearings. I have heard no witness, college professor, corporation lawyer, Senator, judge, or other official, express himself more interestingly, logically, forcefully, or felicitously than you have expressed yourself today.

Dr. FEINSINGER. Thank you very much, Senator.

Senator MURRAY. Senator Douglas.

Senator DOUGLAS. I do not have a question to address to the witness, but I do want to clarify a point that Senator Donnell made, for the record.

Senator Donnell asked the witness about the respective scopes of review of decisions under the Wagner Act and the Taft-Hartley Act. He pointed out that the Taft-Hartley Act added the word "substantial," and also that the record as a whole should be considered.

I am not a lawyer, as you know, but that comparison struck a somewhat familiar bell in my memory because I had thought that the point was covered by the 1946 Administrative Procedure Act; therefore, I sent out for the act. I should like to read the provision in point, and then give it to Senator Donnell for inspection. Section 1009 (e) provides that a court may set aside any decision of an agency which is "unsupported by substantial evidence," which means that it would uphold in the positive sense, evidence which was substantial in nature and that it has to be substantial in nature; also to the Administrative Procedure Act declared, "The courts shall review the whole record or such portions thereof as may be cited by any party."

I would like to point out, therefore, that this rule of judicial review had already been established the year before the passage of the Taft-Hartley Act. The Taft-Hartley Act added nothing to the procedures already established.



The Labor Relations Board, in company with all other administrative agencies of a judicial nature, was already following this provision, and the courts were so directed prior to the passage of the Taft-Hartley Act. Repeal of the Taft-Hartley Act would not throw us back to the language of the original Wagner Act, but the Administrative Procedure Act would still be in effect. The requirement of "substantial evidence" would still be imposed, and the record as a whole would still have to be considered.

Senator DONNELL. So the Taft-Hartley Act, you think, Senator, merely duplicates what the Administrative Procedure Act does?

Senator DOUGLAS. That is right, and the repeal of the Taft-Hartley Act would not therefore change the situation on this point in the slightest.

Senator DONNELL. And you regard the provision in the Administrative Procedure Act, which you think the Taft-Hartley Act duplicates, to be wholesome and sound?

Senator DOUGLAS. Yes.

Senator DONNELL. Very well.

Senator AIKEN. Mr. Chairman, may I make a statement on this situation?

Senator MURRAY. Before you make that statement I wish to thank the witness for his appearance here today and for the excellent assistance he has given this committee. We are all very pleased with the manner in which you have presented the arguments here today, and we want to thank you.

Dr. FEINSINGER. Thank you very much. It has been a real privilege.

Senator AIKEN. Mr. Chairman, it is apparent we are getting pretty far behind schedule. We have four more witnesses scheduled for this afternoon, Mr. Jeffrey, Mr. Sanders, Mr. Kirkpatrick, and Mr. Christensen. Mr. Sanders lives in Washington and can come before the committee Monday or at any time. Mr. Kirkpatrick and Mr. Christensen have been here for some time and, feeling sure that they would be called according to schedule today, have reservations to leave for Chicago on the 5 o'clock plane. Mr. Jeffrey has a reservation on the 5:45 plane. I was scheduled to examine Mr. Kirkpatrick. I believe Senator Donnell was scheduled to examine Mr. Christensen. However, in order to permit them to catch their planes, I would be willing to forego the examination as far as I am concerned.

Senator DONNELL. I will join in that so far as Mr. Christensen is concerned. I assume Mr. Christensen has a written statement on file.

Senator AIKEN. And that will give them 10 or 15 minutes each to present their statements and a half hour to catch their planes if they leave promptly and transportation is available.

Senator MURRAY. Very well. Mr. Kirkpatrick, please.

#### STATEMENT OF DONALD KIRKPATRICK, GENERAL COUNSEL, AMERICAN FARM BUREAU FEDERATION, CHICAGO, ILL.

Mr. KIRKPATRICK. Mr. Chairman and gentlemen of this committee. My name is Donald Kirkpatrick. My Chicago address is 58 East Washington Street. We have an address here, an office down on Constitution Avenue.

I am the general counsel of the American Farm Bureau Federation. I appear in reference to S. 249, which proposes to repeal the Labor-



Management Relations Act of 1947 and reenact the Wagner Labor Act of 1935. I speak here today on behalf of the American Farm Bureau Federation, a national general farm organization. Its organizational structure consists of State farm bureaus at the State level; County farm bureaus at the county level, and over 1,325,000 farm families at the farm level. The representative policy-making group at the national level is the voting delegate body, which in 1948 was composed of 139 farmers, speaking for farmers in all sections of continental United States and Puerto Rico.

At the recent annual convention of voting delegates and members, held in Atlantic City during December of 1948, policy resolutions were initially formulated, after days of consideration, by a resolutions committee consisting of 33 persons from the several States within the four great agricultural regions of the country. The committee consisted of the following persons:

R. E. Short, of Arkansas, chairman.

Midwestern States: Charles B. Shuman, of Illinois; Hassil E. Schenck, of Indiana; H. E. Shusher, of Missouri; Frank W. White, of Minnesota; H. A. Praeger, of Kansas; E. Howard Hill, of Iowa; Perry L. Green, of Ohio; C. E. Buskirk, of Michigan; W. A. Plath, of North Dakota; Mrs. Raymond Sayre, of Iowa; Mrs. Russell Cushman, of Indiana.

Southern States: Walter L. Randolph, of Alabama; H. L. Wingate, of Georgia; R. Flake Shaw, of North Carolina; L. F. Allen, of Kentucky; J. Walter Hammond, of Texas; Ransom E. Aldrich, of Mississippi; Thomas J. Hitch, of Tennessee; John I. Taylor, of Oklahoma; Mrs. D. W. Bond, of Tennessee.

Northern States: Warren W. Hawley, of New York; Herbert W. Voorhees, of New Jersey; Edward P. Rowland, of Connecticut; S. Lothrop Davenport, of Massachusetts; Clyde Bonar, of West Virginia; Mrs. Roy C. F. Weagly, of Maryland; Mrs. Lynn Perkins, of New York.

Western States: Ray B. Wiser, of California; Ralph T. Gillespie, of Washington; W. Lowell Steen, of Oregon; Delmar Roberts, of New Mexico; Mrs. Harold Wright, of Montana.

I trust that the committee does not think that I am attempting to be boastful. What I am attempting to do is to show that we have a great democratic organization that comes down here and through careful considerations of matters, of delegated bodies, conventions, and boards of directors, they finally take action. The names on the committee are of 33 different persons from all sections of the country and in most cases were presidents of State farm bureaus.

The following resolution on the subject matter covered by S. 249 was submitted by the resolutions committee and unanimously adopted by the voting delegate body—this is the resolution adopted at Atlantic City:

The welfare of the Nation depends upon the prosperity of all segments of our economy. The rights and benefits of all the people of the United States are paramount to those of any one group or class. Farmers know we cannot maintain a sound national economy if labor, management, or farmers follow unsound or unfair practices. Thus, the welfare of all demands that both labor and industry accept their duties and responsibilities in assuring industrial peace and full production.

Farmers produce abundantly even in periods of low prices. To do otherwise would jeopardize the health and welfare of the American people. Labor has little to gain if increased wages are translated into higher prices for the things they buy. The only real way the standard of living of labor can be improved is by increased real income resulting from high productivity per man. A high level of production at fair prices is the objective of American agriculture. We recommend that both labor and industry accept it as their objective.

The American Farm Bureau Federation favors maintaining such provisions of law as will protect the general welfare. Strikes in industries, essential to the public welfare, jurisdictional strikes, secondary boycotts, hot cargoes, closed shop, wildcat strikes, the use of force and violence, obstruction of commerce, or destruction of property are not in the national interest, and consequently not in the long-time interest of labor itself.

Management must cooperate with labor to improve working conditions, assure policies which will give high real income to workers, and follow such other policies as will contribute to full and sustained industrial production and employment. Monopolistic practices which result in low production and high prices, unreasonable profits, inefficient management, lock-outs and other activities which provide the basis for instability in labor-management relations must be corrected.

Uncontrolled economic power in the hands of either management or labor leaders can equally be a threat to our national well-being. Legislation should be designed to protect the public interest against the selfish exercise of autocratic power either by labor or by management.

We support a reasonable minimum wage for labor. In our judgment, a reasonable minimum wage should fluctuate either up or down with the cost of living.

We urge our Government to develop and aggressively follow a vigorous anti-monopoly program. The elimination of all monopoly except that under Government regulation and control is essential to the successful operation of the competitive system. Farmers and others cannot produce for a free market if prices in large segments of our economy are rigged by monopolistic practices.

I am certain that in making these recommendations, it was not the intention of the Farm Bureau leaders to be either prolabor or antilabor. Likewise, it was not their intention to be promanagement or antimanagement. One full resolution on labor-management relations is intended to provide the sort of economic philosophy which might well serve as the basis for real cooperation among the great economic groups in this country.

The board of directors of the organization, with a membership of 22 persons, representing all of the agricultural regions of the United States, has the duty, within the framework of the national legislative policy resolutions, to direct the actions of the executive officers. The board of directors held a 4-day meeting here in Washington, January 24-27, 1949. They instructed the executive officers to support aggressively, such action as will best assure the maintenance of adequate legislation in the field of labor-management relations.

Prior to the consideration and enactment of the Fair Labor Standards Act of 1938, farm organizations did not take an active interest in labor legislation pending before the Congress. However, since that time there has been an ever-increasing interest on the part of general farm organization in labor-management problems. We believe this is as it should be. After all, farmers have a manifold interest in the development and maintenance of healthy labor-management relations: (1) They are interested in having freely available widespread markets for farm products; (2) they have a vital stake in making certain that services performed between the producer and the consumer are done efficiently; (3) costs of things farmers buy are an important factor in the farm economy (farm operating costs in 1948 were higher than total gross farm income any year prior to 1942); and (4) farm people are interested in promoting, to the best of their ability, policies and programs which are in the general interest—for they know that only through the development and maintenance of a dynamic, full-production economy, can the interests of farm people themselves be promoted and sustained.

I should like to reread that paragraph of our resolution which deals most directly with the subject matter of this bill:

The American Farm Bureau Federation favors maintaining such provisions of law as will protect the general welfare. Strikes in industries essential to the public welfare, jurisdictional strikes, secondary boycotts, hot cargoes, closed shop, wildcat strikes, the use of force and violence, obstruction of commerce, or destruction of property are not in the national interest, and consequently not in the long-time interest of labor itself.

We do not presume, gentlemen of this committee, to be experts in the field of labor-management relations; neither do I presume to be thoroughly acquainted with the technicalities of present laws on this specialized subject or of the implications of proposed legislation in this field. Nevertheless, in behalf of American farmers, we urge members of this committee to make certain that the Government has the power under law to deal with strikes that jeopardize the national welfare. Concentration of power which can threaten the public health and safety is dangerous, whether it be in industry, labor, or agriculture. We believe it is the duty of Congress, which we sincerely believe to be the best protector of the people's welfare, to make certain that our Government has the capacity to deal effectively with threats to the general welfare.

In his annual address to the 1948 convention of the American Farm Bureau Federation, Allen B. Kline, president of the organization, said:

Monopoly is a bad thing. Traditionally, we have thought of it as centralization of capital used to control production of goods, their prices, and distribution. The time has come when we must take note, as part of the public, of the apparent capacity of well-organized groups of labor, some of them very small, to disrupt production and distribution in this country. Monopoly is no more in the public interest if it is operated by a labor union than it is if it is imposed by a cartel. The farmer is interested in full production, in high real wages for labor. The farmer knows full well that his own real income depends upon continuing high production in the rest of the economy. We are more than willing as farmers, each of us to produce with the resources at his command. All we wish to get is what we earn. We insist, however, that those things must be done which will accomplish continuing high production in the rest of the economy. Personally, I am sure that this can only be facilitated by laws. That much the laws can and must do. With even the best of law, however, there is much dependent on honest efforts of citizens working freely in a productive and progressive society.

It is our firm belief that the provisions of S. 249 definitely need strengthening in at least three very important particulars which are of vital importance to the public and to American agriculture.

First. Restraining orders against certain strikes and lock-outs: S. 249 contains no provisions empowering the President of the United States, upon recommendation of a board of inquiry, to direct the Attorney General to apply for a restraining order to enjoin for a limited period—a reasonable cooling-off period, if you please—a threatened or actual strike or lock-out affecting an entire industry when the national health or safety is imperiled. There are some who contend that such power presently exists exclusive of any more recently enacted legislation. There are others who challenge the existence of such power. Our organization expresses no opinion as to the existence or nonexistence of this implied power. At best, the question is a highly debatable one. The American Farm Bureau Federation strongly urges the Congress to take affirmative action to place this power in the hands



of the President of the United States, subject only to the condition precedent of the recommendation of a fact-finding inquiry.

Second. Jurisdictional strikes: In our opinion, S. 249 does not adequately provide for handling jurisdictional disputes between labor organizations, when such disputes degenerate into jurisdictional strikes seriously affecting innocent third parties. The public is entitled to protection against such conflicts. Such family fights between labor organizations must continue to be defined as unfair labor practices, with violations subject to appropriate civil sanctions. Farmers have too long been the innocent victims of these unsocial and vicious practices. The American Farm Bureau Federation stands firmly for positive provisions of law outlawing such practices.

Third. Secondary boycotts: S. 249 does not adequately outlaw secondary boycotts. These instrumentalities are dangerous weapons. The possession and use of them must be made unlawful and finally subject, if need be, to the restraining processes of Federal courts. The public, and farmers in particular, must not again be subjected to the abuses of such practices, whether exercised by labor groups, or by labor groups in collusion with employers. Protection against such practices must be preserved.

We respectfully urge this committee to make certain that protection of the public interest in these three important matters be definitely assured by Federal statute.

Mr. Chairman and gentlemen of this committee, let me say this to you in closing. Agriculture and labor and management have much in common. We are citizens together in a free country. We believe the general welfare requires the best utilization of all of our resources. We are ambitious to exercise the freest interchange of our goods and services. We all want full employment. We all want full production. We all want ever-increasing standards of living.

And I say these things to reflect what I think is the attitude of the Farm Bureau people of their country and their leadership, that this problem should be approached in a feeling of kindness and not in a desire to be antagonistic unduly, but on certain things the organization feels very keenly and positively.

I thank you, Mr. Chairman and gentleman of the committee.

Senator AIKEN. Mr. Chairman, in the interest of helping Mr. Kirkpatrick keep his plane schedule, I will forego any examination of the witness.

As I understand it, representing the American Farm Bureau Federation, you are asking the Congress to provide the President with authority to deal with strikes which affect the national health and welfare, and to provide protection for innocent third parties against secondary boycotts and jurisdictional strikes, but that you are not attempting to tell this committee in detail just how that should be done.

Mr. KIRKPATRICK. That is right, Mr. Senator.

Senator PEPPER. Mr. Chairman, out of respect for Mr. Kirkpatrick's desire to catch a plane, I will be very brief in my questioning.

Mr. Kirkpatrick, Senator Hill, who comes from a great farming State, Alabama, has asked a good many witnesses, especially labor leaders who appear here, if they do not believe that the interests of the farmers and the workers are very directly related, that the prosperity of the one contributes to or is essential to the prosperity of the other. You generally share that view?



MR. KIRKPATRICK. Oh, yes; there is no doubt about that at all. In organized agriculture, as I think of it in all of our farm organizations, there is that attitude and feeling and sensibility of the relationship. Why should it not be? That is the market.

SENATOR PEPPER. Because, after all, each buys from the other.

MR. KIRKPATRICK. Oh, yes.

SENATOR PEPPER. Most of the folks of this country are workers and the largest group in this country are farmers.

MR. KIRKPATRICK. They are workers, too. Of course, they have some capital in the picture.

SENATOR PEPPER. The reason I asked that, I was impressed by what Mr. William Green said here, and you have indicated the same attitude in your appearance here today.

MR. GREEN said, I believe, that always, or he implied generally, if not always, they had supported or asked their friends to support the farm program—that is, to support prices and whatever generally was good for the farmers. I have never known of labor opposing the parity price for the farmers and attempting to take a limited, selfish point of view with respect to our great agricultural program, and I have been very much impressed today that while you have three matters here that you have recommended for consideration by the committee, you have in no sense of the word, come here as a critic of labor and wanted to impress restrictions or discriminatory restrictions upon labor.

MR. KIRKPATRICK. I think, Mr. Chairman, if you will allow me to say this, you will notice in this resolution there is reference to the closed shop. I do not believe that the farmer—and maybe our organizations have not studied that through as completely as they should. I think the name “closed shop” is something that the average farmer thinks of as monopoly and restraint there, so the name is very unfortunate, even if it has virtue.

Our board just did not want to get into that and did not want to press that part of the resolution. There are definite commitments with the three things that I have outlined there, and I have tried to show you how the organization has come down, and that is their good thought, Mr. Chairman and gentlemen of the committee.

SENATOR PEPPER. You did not profess to be an expert in that field. You did not want to make recommendations on that.

Well, now Mr. Kirkpatrick, I was born on a small farm in east Alabama and I was born in 1900. When I got to the age of consciousness I began to realize the problem that the farmers had, and I remember that they were talking about the Farmers' Union and about various efforts that had been made to get the farmers together.

Is it not a fact that the farmers suffered throughout our history until either through self-organization or through Government assistance they were able to present something like a solid front?

MR. KIRKPATRICK. I think that is a fair statement.

SENATOR PEPPER. For the protection of their standard of living. You could well understand the effort of labor to organize and to get the strength of unity in protecting their wages as farmers find unity desirable in the protection of their products and their markets.

MR. KIRKPATRICK. That is right, sir.

SENATOR PEPPER. That is all.

MR. KIRKPATRICK. Thank you, Mr. Chairman.

Senator AIKEN. We hope, Mr. Kirkpatrick, you will make the plane.

Mr. KIRKPATRICK. Thank you again, and I appreciate the tolerance, kindness and courtesy, and also my organization, I am sure, does.

Senator AIKEN. Mr. Chairman, I find the next two witnesses are both in the same boat. They both have reservations on the 5:45 plane for Chicago and St. Louis.

(Discussion off the record.)

#### STATEMENT OF GEORGE B. CHRISTENSEN, MEMBER OF FIRM OF WINSTON, STRAWN, SHAW & BLACK

Senator MURRAY. Mr. Christensen, please.

Senator DONNELL. Mr. Christensen, before you start your statement, would you be kind enough to state your name? You are a member of the law firm of Winston, Strawn, Shaw & Black. That is one of the largest firms in the Midwest, is it not?

Mr. CHRISTENSEN. For Chicago it is a large firm.

Senator DONNELL. A very large firm, yes, and it specializes in labor cases; that is true, is it not?

Mr. CHRISTENSEN. No.

Senator DONNELL. I mean to say, you have a department of your firm which specializes in that?

Mr. CHRISTENSEN. You cannot have a general law business this day and age and not engage in some labor practice.

Senator DONNELL. Incidentally, it has been asserted here in substance before our committee that the Taft-Hartley Act has created a regular bonanza for lawyers. What has been the experience of your firm on that?

Mr. CHRISTENSEN. That is not true, Senator. In our own example, and I know from conversations with other members of the bar, in our own practice we have not lost any clients. We have got a few more, but we are doing considerably smaller volume of labor work than we did a couple of years ago.

Senator DONNELL. Before the Taft-Hartley Act?

Mr. CHRISTENSEN. Before the Taft-Hartley Act, and I think the reason is these problems are now being settled out in the shops. The unions feel some responsibility and they get into the lawyers' offices. For our part I suppose we lose a little business, but that business we are glad to lose because you have a better economy if you do not have it.

The labor unions, some attorneys, I believe, have more business. That is because, by the large, the NLRB provided them a free legal department pre-Taft-Hartley, and now they have to foot their own legal bills.

Senator DONNELL. Thank you. Go right ahead with your statement.

Mr. CHRISTENSEN. My name is George B. Christensen. I live in Glencoe, Ill., and am a member of the Chicago law firm of Winston, Strawn, Shaw & Black. We are experienced in Labor Board practice.

While I am here at my own expense, and will state views for which I am responsible, I am authorized by the Chicago Association of Commerce and Industry to state that these views substantially reflect those of its membership. The association consists of 5,000 small, large, and

in-between Chicago business organizations which believe in the capitalistic system and that what is best for the public is best for industry, commerce, and labor. Since those are the men who must produce the pay rolls from which union dues and taxes to support the Government may be deducted, their views are important.

Additionally, I have the honor to offer to file, and I now ask to do so, on behalf of the Illinois Chamber of Commerce, consisting of 8,815 businesses scattered through every county in Illinois, an objective analysis of the problem for the welfare of the consumer, the wage earner, and the investor.

I would like to offer that analysis, which I believe has been distributed or is in the hands of your secretary.

Senator DONNELL. Would you like to have that incorporated in the record?

Mr. CHRISTENSEN. I would, sir.

Senator DONNELL. I so move, Mr. Chairman.

Senator MURRAY. All right; it may be incorporated in the record.

(The document referred to is as follows:)

A STUDY, SUPPORTED BY FACTUAL DOCUMENTATION, PRESENTING BASIC FUNDAMENTALS AND LEGISLATIVE PROPOSALS IN SUPPORT OF THEM WHICH MUST BE INCLUDED IN ANY FAIR LABOR-MANAGEMENT RELATIONS CODE

(Developed by Personnel and Labor Relations Committee, Illinois State Chamber of Commerce)

THIS STUDY REPRESENTS LONG AND THOROUGH ANALYSIS OF LABOR-MANAGEMENT RELATIONSHIPS

In 1946, the Illinois State Chamber, in its recommendations for improvement of labor-management laws, urged that consideration be given to exactly the same fundamentals as are now being stressed.

Early in 1948, the State Chamber conducted a survey among its members for the purpose of securing the result of their experiences with existing labor-management laws.

An able State Chamber Committee, the personnel of which is listed on the back cover of this booklet, has contributed a great deal of time and effort to a study of the problem during the past three years. Committee members represent many varied types of business, and all sections of the State of Illinois.

The Study is a composite of today's best thinking in Illinois on the part of a representative cross-section group of business men who have had wide day-to-day experience with labor-management problems. I urge Chamber members, legislators, community leaders, and citizens generally to give this fine presentation the thorough consideration it deserves.

ROYAL A. STIPES, JR.,

*President, Illinois State Chamber of Commerce.*

FEBRUARY 5, 1949.

The Illinois State Chamber of Commerce recommends consideration of these fundamentals:

Labor legislation is only one part of a total pattern of legislation which has long been accepted as necessary to prevent interference with our economy.

The public interest should be used as the standard in evaluating labor legislation.

Anyone seeking to change existing laws should be required to prove to the Congress how suggested changes will benefit the public interest as against special or private interests.

Improvement in our standard of living must be continued by preventing artificial restraints upon efficiency and productivity.

Individual rights must be protected.

The collective-bargaining process must be protected.

Monopoly restrictions resulting from collective bargaining should be restrained because they are injurious to the public.

Individuals pledged to destroy a free economy should be removed from positions of leadership.

The political activities of special-interest groups, including unions, are properly matters of public concern.

and recommends these 16 legislative proposals:

1. Eliminate featherbed rules and practices destructive to efficiency.
2. Prevent secondary, sympathetic, and jurisdictional strikes and boycotts.
3. Guarantee the right to strike to enforce contract demands made upon the employer, and for other lawful purposes.
4. Guarantee the right to work, by preventing mass picketing and violence.
5. Guarantee freedom of speech to union leaders and employer representatives.
6. Permit "union shops," provided that discharge thereunder is limited to discharge for nonpayment of dues and initiation fees.
7. Permit checkoff of union dues, provided voluntary authorization is given by the employee.
8. Prevent monopoly by the closed shop method.
9. Limit the monopoly effects of industry-wide bargaining.
10. Make unions and employers legally responsible for violation of collective-bargaining agreements.
11. Require both unions and employers to bargain in good faith.
12. Prevent both unions and employers from interfering with the selection and control of bargaining representatives of the other side.
13. Require filing of non-Communist affidavits by employer representatives as well as labor union leaders, before permitting them to use the National Labor Relations Board.
14. Require the filing of union financial reports.
15. Prevent the use of union or corporate funds for political purposes, without restricting freedom of speech.
16. Provide special emergency procedures to handle national emergency strikes.

as a basis for a Fair Labor-Management Relations Code.

"We accomplish nothing by striking at labor here, at management there. There should be no emphasis placed upon considerations of whether a bill is antilabor or prolabor. \* \* \* Equality for both and vigilance for the public welfare—these should be the watchwords of future legislation."—HARRY S. TRUMAN, *New York Times*, June 12, 1946.

#### THE STUDY—FUNDAMENTAL ECONOMIC CONSIDERATIONS

##### THE PUBLIC HAS A VITAL INTEREST IN LABOR LEGISLATION

The current belief that the labor problem is a private fight between labor unions and management is a misconception. Union and management leaders appear to be the contestants, but the entire economy is directly affected by the agreements these parties reach and by the strikes that result if these parties fail to agree. President Truman recognized this when he said:<sup>1</sup>

"Industrial strife in some key industries means not only loss of a great amount of wages and purchasing power but it may have ramifications throughout the country. \* \* \*

He also stated on June 20, 1947:

"I share with Congress the conviction that legislation dealing with relations between management and labor is necessary. I heartily condemn abuses on the part of unions and employers and I have no patience with stubborn insistence on private advantage to the detriment of the public interest."

Not only does the public often think of the labor problem as a private struggle between labor unions on the one hand and management on the other, but so do some members of the legislature. It is this misunderstanding which causes them to think of labor legislation as being repressive to the large group of people known as wage earners and for the benefit of a small minority of individuals called management. The error of such a view was pointed up by President Truman when he said:<sup>2</sup>

<sup>1</sup> *New York Times*, December 3, 1945.

<sup>2</sup> *New York Times*, June 12, 1946.



"We accomplish nothing by striking at labor here, at management there. There should be no emphasis placed upon considerations of whether a bill is 'anti-labor' or 'pro-labor.' Where excesses have developed on the part of labor leaders or management, such excesses should be corrected—not in order to injure either party—but to bring about as great an equality as possible between the bargaining positions of labor and management. Neither should be permitted to become too powerful as against the public interest as a whole. Equality for both and vigilance for the public welfare—these should be the watchwords of future legislation."

To evaluate proposed labor law changes objectively, it is necessary to identify the real parties who are interested in this problem.

#### THE VARIOUS GROUPS AFFECTED BY LABOR LEGISLATION

The three groups and their interests in the labor problem may be identified as follows:

*The Consumer*, who worries about prices. The largest group of persons interested in a business enterprise are the consumers, who demand of management the highest quality product possible at the lowest possible price. Under normal conditions, consumers bargain with management by their ability to switch their purchases from one company's product to another's.

*The Wage Earner*, who worries about his pay. Wage earners employed by the business enterprise (who are also consumers and may be investors) seek to obtain from that enterprise the highest possible income composed of wages and other benefits. Wage earners bargain with management by not accepting employment, by leaving employment, and by striking to obtain collective demands.

*The Investor*, who expects to earn a dividend. Investors in a business enterprise (who are also consumers and may be wage earners) demand from that enterprise the highest possible money income (interest and dividends). Investors bargain with management by refraining from investing; by withdrawing their investment, and by the use of their power to discharge the management.

Management bargains with each of the three groups and the "bargain" it reaches with any one group affects the other two. Management is, in effect, a conduit through which is channeled the pressures exercised by each of the three groups on the others. Managements, to operate efficient plans, must:

(1) Pay a wage high enough to obtain the proper skills and to avoid costly strikes, yet not so high that the costs become noncompetitive and the products cannot be sold. Managements must raise wages as wage levels rise in the area.<sup>3</sup>

(2) Price the product low enough to obtain a large number of sales, but high enough to pay wage costs and insure an adequate return to the investor.

(3) Pay enough to the investor to insure future investment and to insure management's own job security, but not so much as to prevent allocation of money for machinery improvements, plant expansion, or to prevent the establishment of proper prices or the payment of proper wages.

Management has natural incentives to adjust the interests of the three groups of persons directly interested in the business enterprise, whether it is bargaining with wage earners, consumers, or investors.

Because labor and the public have not understood management's function as a balancer of interests this has led to the traditional picture of management as a tool or mouthpiece of investors paid to keep investment returns high at the expense of the other groups. To see whether this is true, analysis of the income shares which the three groups of persons have received is in order.

By analyzing the national income for various years, the shares which the wage earners, investors, and consumers have received from the many different business enterprises in this country can be determined. Only the shares people receive which are available for the purpose of purchasing consumer goods can be fairly compared. Hence, we should compare the wages received by wage earners with the dividends received by stockholders.

<sup>3</sup> "Bidding for labor among employers has been more active than most economists have assumed. The picture of a helpless wage-earner dealing with a large employer, frequently pictured by economists, is not easily reconciled with the wage and price movements of the last century." Slichter, *Wage Policies*, 22 Acad. Pol. Sci. Proc. 3 (1946).

If management in the last few years have been favoring investors over the wage earners (which is what many people believe), the investor's share should be much higher proportionately than the wage earner's share.

Now, look at the facts.

Investors received in dividends from corporations in this country nearly six billions of dollars in 1929; nearly four billions of dollars in 1939; and in the last three years received 5.6 billions (1946), 6.9 billions (1947), and 7.5 billions in 1948.<sup>4 5</sup>

Employees of corporations in the same years received the following amounts as wages: Thirty-four billions in 1929, 29.0 billions in 1939, 71.2 billions in 1946, 82.0 billions in 1947, and about 88 billions in 1948.<sup>6</sup>

These figures, reflecting the relative shares of these two large groups, must be put into their proper relationship in terms of real dollars by dividing them by the Consumer's Price Index for the various years. This must be done because we are talking about income used by individuals to buy consumer goods. When this is done, we have the following comparison:

	1929	1939	1946	1947	1948
Paid to investors in billions.....	4.7	3.8	4.0	4.3	4.4
Paid to wage earners in billions.....	27.0	29.0	51.0	52.0	52.0

The present high rate of corporate reinvestment of earnings has been strongly criticized by labor spokesmen.

But one of the main causes for the present high rate of corporate reinvestment is in the tax laws. Corporate income is taxed twice—once as income of the corporation and again as personal income of the dividend recipient. If all corporate income were distributed as dividends, the amounts remaining, after corporate and personal income taxes, for reinvestment by individuals would today be relatively small. Corporations can more effectively reequip themselves by investing their income directly. Such corporate reinvestment, moreover, is socially desirable. President Truman pointed this out in April 1947, when he said:

"No community leaders have a graver responsibility at this moment, or a greater opportunity for service to their country, than our businessmen \* \* \* By careful planning, by elimination of wasteful methods and practices, *by expanding facilities where needed*, and by increasing productivity, businessmen can greatly help in dispelling the inflationary cloud now hanging over us."<sup>7</sup> [Italics added.]

It can be seen immediately that the wage earner's share in 1948 was almost twice as great as it was in 1929, whereas the investor's share in 1948 was less than it was in 1929. The inference that managements, in making decisions concerning wages, prices, and investment return are favoring the group which hires them and has the power to fire them, is completely erroneous. Between the two groups, the wage earner has received a much greater proportion of the national income than the investor.

The largest part of corporate profits today are reinvested into industry and, hence, are not consumed by the group known as investors.<sup>7</sup> Business is carrying on the greatest replacement and expansion program in history, and this spending program, of course, means wages for many people.

<sup>4</sup> Annual rate based on first three-quarters.

<sup>5</sup> See Appendix A for a detailed explanation of the figures herein used.

<sup>6</sup> The figures on corporate reinvestment in various years are: 1929, 2.6 billions; 1939, 1.2 billions; 1936, 7.2 billions; 1947, 11.2 billions; 1948, 13.5 billions. When these figures are converted to real dollars, we get: 1929, 2.1 billions; 1939, 1.2 billions; 1946, 5.2 billions; 1947, 7.0 billions; 1948, 7.9 billions. The amounts first stated include false income in the form of an increase in the value of inventory; when this is removed, the figures are: 1929, 3.1 billions; 1939, 0.5 billions; 1946, 2.2 billions; 1947, 6.1 billions; 1948, 9.0 billions. These amounts are further distorted by the fact that the value of corporate assets is fixed at original cost for depreciation. Hence much corporate income retention is due to replacement costs which are higher than the depreciation funds set up for replacement. The capital assets of corporations are not increasing by reason of reinvestment as much as it would appear.

<sup>7</sup> C. I. O. economists take a contrary view. In their publication, *The Economic Outlook*, for January 1949 they criticize management for not selling stock, and for using a large part of corporate profits for expansion, arguing that this puts the burden on workers and consumers. Workers by receiving low earnings and consumers by paying unreasonably high prices are being forced to become involuntary investors without being given any share of ownership. Actually wage earners receive most of the benefits from reinvestment of profits, in the form of higher wages and increased employment opportunities. Thus, between 1840 and 1940, a period of great technological improvement and industrial expansion, the hourly earnings of industrial workers rose about nine-fold, whereas the index of prices rose about 10%.

All people are consumers. Therefore, the fairness of the consumers' share should be considered. So far as the consumers' share from industrial enterprise is concerned, it is taken in terms of goods. As prices increase the amount of goods available to the consumer becomes smaller. As prices decrease, the amount of goods available to the consumer increases. Whether or not prices of goods sold by corporations in this country have been too high becomes merely a debate over the question of whether or not corporate reinvestment has been too great. (As noted, such investment is in the public interest.) No claim can be made that prices have been too high because management has made decisions for the special benefit of the investor, since it has been shown that the investor's share has decreased. The only other basis for a claim that prices are too high is that the share going to the wage earner has been too great. The wage earner cannot complain that prices are too high without being fully conscious that his high wage is one cause of high prices.

No one can object to managements' decisions to reinvest in new plant facilities, tools, and equipment, least of all the wage earners, as such reinvestment increases their job security.

A proper comparison of the shares of earnings resulting from business enterprise received by wage earners and investors demonstrates that management has not favored investors, but that wage earners have been the chief beneficiaries of management's decisions.

Investors, as a group, are the forgotten people in our economy today. When we talk in terms of the investor group, we are not talking about a small number of people. General Motors has more investors than it has wage earners. General Electric has 185,000 employees and 250,000 investors. There are many companies which have more investors than they have wage earners, and these two groups are often very comparable in size.

These figures demonstrate clearly that the labor-management problem is not one which concerns wage earners and managements alone, but concerns persons as wage earners, consumers, and investors, and that managements are actually the conduits through which the pressures of one group operate upon the other two. When managements decide to raise prices and lower dividends because of an increase in wages, or decide to lower wages and dividends because prices must come down, managements obtain no special personal advantage. They are usually salaried employees. Their decisions are made in order to keep their companies operating successfully.

#### LABOR LEGISLATION IS ONE PART OF A TOTAL PATTERN OF LEGISLATION DESIGNED TO PREVENT INTERFERENCE WITH THE FUNCTIONING OF THE ECONOMY

The laws written to govern our economy have been intended to minimize the ability of any one group to extract from a given enterprise, by action contrary to public interest, a greater share than it deserves.

Legislation has been enacted to cover the relationships of business enterprises with their consumers and suppliers, to prevent abuse by the seller of the buyer and also abuse by the buyer of the seller, as follows:

(1) Individual sellers, which may be company managements, are not permitted to conspire with other sellers, through price agreements or other tactics in restraint of competition, to raise prices and maintain them at a monopolistic level. The Sherman Anti-Trust Act, Clayton Act, and Federal Trade Commission Act are examples of legislation of this type.

(2) Large buyers are not permitted to obtain unfair price concessions to the disadvantage of the seller and smaller buyers through abuse of their tremendous purchasing power. The Robinson-Patman Act is an example of such legislation.

Similar legislation has been designed to minimize abuse by investors, as well as abuse of investors, as follows:

(1) Individual investors are protected by the Securities Acts against incorrect information when purchasing securities. Individual stockholders are protected by State corporations acts which require information to be supplied and specify certain meeting and election procedures.

(2) Other legislation prevents large investors from abusing minority stockholders. Cumulative voting statutes protect minority stockholders. Concentration of control of public utilities in a few powerful investors through holding companies was eliminated by the Public Utility Holding Company Act of 1935.

Legislation affecting the relationship with the third group, the wage earner, now follows the same pattern:



(1) The wage earner is protected by being given a statutory right to bargain, a right to strike, and protection against discrimination for union activities. The Wagner Act, in which these rights are expressed, was never designed to be a full-blown labor-relations statute. Its limited purpose was to protect employees against employer interference with their right to form and join labor unions, and to compel employers to bargain collectively.

(2) Legislation designed to prevent abuses by labor unions was established for the first time in the Labor Management Relations Act of 1947. The changes it contains are only the other side of the normal legislative pattern. They are designed to prevent abuse of the rights of the public, employees, and employers by unions without infringing upon the wage earners' basic rights under the Wagner Act.

The claim that legislation designed to prevent abuses by labor unions should be removed from the statute books means that, in this total pattern of legislation, wherein the buyer-seller relationship and the investor-corporate relationship have been regulated by legislation preventing abuses, the advocates for repeal assert that legislative coverage at the third point of the triangular relationship should be exclusively one-sided. Such an assertion cannot be based on a claim that powerful labor unions never have abused their power because examples of such abuse have been all too common. President Truman asserted, at the time of the railroad strike in 1946, that the very existence of the Government was at stake due to abuse of power by union leaders. He said:<sup>8</sup>

"My Fellow Countrymen, I come before the American People tonight at a time of great crisis. . . . The crisis tonight is caused by a group of men within our own country who place their private interests above the welfare of the nation. \* \* \* it is inconceivable that in our democracy any two men should be placed in a position where they can completely stifle our economy and ultimately destroy our country. The government is challenged as seldom before in our history. It must meet the challenge or confess its impotence. \* \* \*"

THE PUBLIC INTEREST CONSIDERATIONS TO BE USED AS STANDARDS IN EVALUATING LABOR LEGISLATION—IMPROVEMENT IN THE NATIONAL STANDARD OF LIVING MUST BE CONTINUED BY PREVENTION OF ARTIFICIAL OR UNWARRANTED RESTRAINTS UPON EFFICIENCY AND PRODUCTIVITY

It is a simple rule that a nation's standard of living depends upon its productivity per man-hour. The public is interested in industrial efficiency just as much as, if not more than, the management and the owners of an individual company. The *London Economist* in August 1944 called upon the British Government to organize a campaign to inform Great Britain of the need to raise British production to the same level per worker as in America, to give Great Britain a standard of living equal to this country.<sup>9</sup> The *Economist* maintained that the alternative would be for the British standard of living to drop to the level of that of Germany and other European countries. This English newspaper stated that the average American worker produces in one hour "one and one-half to two and one-half times as much wealth as the British worker," and consequently enjoys more leisure and better conditions.

Today the people of the United States enjoy the highest standard of living the world has ever known. The American economy is the world's most productive, for even with only six per cent of the world's population and a still smaller percentage of the world's labor force, the United States produces well over one-third of the world's goods.<sup>10</sup> The standard of living has risen considerably in the United States in the last eight years. Consumption of consumer goods per capita (adjusted for changes in price) has risen about 31% since 1940. Between 1940 and 1946, the lowest fifth of the families in the income scale rose 68%; the second lowest, 59%; the highest fifth, 20%.<sup>11</sup>

High productivity or high efficiency means a high standard of living because there are more goods produced which can be consumed by the nation. A high standard of living is in the public interest. This principle was expressed by President Truman in his Labor Day speech in September 1948 when he said in discussing labor legislation:

"Our goal now is to continue to increase our production and our standard of living."

<sup>8</sup> Radio address of President Truman, May 24, 1946.

<sup>9</sup> 25, *American Economic Review*, 143-145.

<sup>10</sup> 25, *American Economic Review*, 143-145.

<sup>11</sup> *Atlantic Monthly*, July 1948, "Are Profits Too High?"



He explained that:

"Better legislation on labor-management relations is an absolute necessity in the program to increase our economic strength and to improve our national standard of living."

One of the most curious phenomena of contemporary labor-union philosophy has been the rejection of the concept of increased productivity and efficiency as a means of increasing the real living standard of wage earners. Union leaders, with few exceptions, have shied away almost violently from association with the idea that workers, by increasing their own productivity, will elevate their standard of living.<sup>12</sup> Instead, top labor leadership has preached the doctrine that, regardless of the volume of commodities available for consumption, purchasing power must not only be maintained, but increased. This type of thinking is not only incorrect but is dangerous to the nation's long-run well-being. It is a most elementary and basic concept that production of goods in great volume, through efficient utilization of labor and capital, is the only formula for the achievement of a high standard of living in an industrial society. That is the very principle that has made the economic status of the American worker the envy of his fellow wage earners the world around. The national legislature is duty bound to assist in preserving the nation's high standard of living, and to the extent that this can be accomplished through labor legislation, this duty should be one of the major public-interest considerations in evaluating proposed legislation.

The interferences with industrial efficiency which have resulted from abuse of power by labor organizations are the following:

#### FEATHERBED RULES IMPOSED UPON BUSINESS AND INDUSTRY BY LABOR UNIONS

The following methods have been used by labor organizations to decrease industrial efficiency, in the mistaken view that by so doing labor organizations can "make work":

1. Limiting daily or weekly output;
2. Indirectly limiting the speed of work;
3. Controlling the quality of work;
4. Imposing time-consuming methods of doing work;
5. Requiring that unnecessary work be done or that work be done more than once;
6. Regulation of the number of men in a crew or on a machine or requiring the employment of unnecessary men;
7. Requiring that work be done by the members of a given skilled craft or occupation;
8. Prohibiting employers or foremen from working at the trade;
9. Retarding or prohibiting the use of machines and labor-saving devices.

The effects of such practices, particularly in the railroad, printing, and construction industries, have been serious. In the construction industry, "featherbedding" has raised the cost of new housing tremendously. The following are examples of make-work practices in the construction field:<sup>13</sup>

1. The "Gunite" method of blowing cement through a pneumatic hose was invented to cut building costs. The plasterers' union in San Francisco required that three operating engineers be hired for each unit, as well as two plasterers. Under these rules, it cost more to put on stucco with the "labor-saving device" than before, when the new method was not used.
2. In Chicago, use of ready-mix concrete was prohibited by the cement finishers' union.
3. In Boston a "maintenance engineer" for \$72.00 a week had to be hired to turn on an electric welding machine in the morning and off at night. Each crane must have an oiler at \$50.00 a week who works fifteen minutes a day.

<sup>12</sup> On August 7, 1947, the Labor Committee of the National Planning Association made public a report urging that labor and industry cooperate to achieve greater productivity and stating that "workers increasingly realize that high wages are made possible and continuation of their rising trend can be insured only by the high and increasing productive efficiency of our economy." Affixed to the report were names of 33 eminent labor leaders, including Walter P. Reuther, President of the United Automobile Workers, C. I. O. Daily Lab. Rep. No. 154 (Aug. 7, 1947), p. A-3, D-1. The faction opposed to Reuther within the Union seized upon this to attack Reuther and labeled him with the purportedly derisive epithet of "Productivity" Reuther. Reuther subsequently heatedly denied that he had authorized his name to be attached to the report and stated that he thought that his position "was by this time sufficiently clear as to make it unthinkable that anyone would use my name in connection with any statement which declares that increases in hourly wages depend on advances in output per man-hour." Daily Lab. Rep. No. 169 (Aug. 28, 1947), p. A-13.

<sup>13</sup> Source: *The Wall Street Journal*, October 15, 1947.

4. Plumbers are not allowed to use electric pipe threaders.
5. Carpenters cannot use electric saws and mortising machines.
6. Painters cannot use spray guns in Pittsburgh, Detroit, New York, Chicago, and San Francisco, and in Boston paint brushes cannot be over four and one-half inches wide, whereas in Los Angeles six and one-half inch brushes are the maximum size. \$100 per house would be saved by spray guns.
7. Windows with glass installed in the factory could not be used in Chicago because of the glaziers' union rules. Where it is used, idle glaziers must be paid.
8. Precut pipe cannot be used in New York.
9. Only plumbers at \$2.25 an hour can unload pipe in Philadelphia.
10. A union foreman is required at \$115 a week for every ten bricklayers in Cleveland.
11. Carpenters in New York and Chicago will not install doors on which locks, hinges, or knobs have been attached at the factory.
12. All reinforcing rods must be bent on the job by metal lathers in New York.
13. Bricklayers lay only 300 bricks a day, compared with 800 to 1,000 before the war. They receive, through forced overtime, \$120 a week.
14. Tile setters set only 70 square feet a day, where they used to set 100 to 125 square feet a day.
15. Lathers put up 35 bundles a day, equal to union "minimum" in Cleveland, when they previously put up 60.
16. Prefabricated houses will not be installed in many localities.

The sum total of all the practices in the construction industry has been extremely detrimental to the wage earners of this nation who want homes. Reliable estimates indicate that, if make-work practices were eliminated, building costs would be reduced 10 to 20 per cent.<sup>14</sup>

Labor's complaint against improved mechanical devices does not result from any basic quarrel with the machine age. It is not based upon any long-term consideration of social interest and advantages, but, rather, on a short-run threat to immediate employment to particular employees. Thus, we have in these featherbed practices examples of devices forced upon the employer for short-run selfish gains, to the detriment of the entire economy. Sumner Slichter, the noted Harvard economist, has said:<sup>15</sup>

"All that the workers can hope to get out of the make-work rule is some relief during the period which otherwise would be required for the labor supply to adjust itself to the demand. For this small gain they impose a lasting burden on the community. It is poetic justice, perhaps, that a large part of the burden falls upon the workers who impose it. The capacity of unions to impose higher costs upon employers of course, is limited. Hence, if a union elects to impose higher costs in the form of make-work rules, it is less able to impose higher costs in the form of higher wages."

That these devices are contrary to public policy is evidenced by the rulings of courts, which have often held activity to achieve these forms of interference illegal.<sup>16</sup> Federal courts, after the passage of the Norris-LaGuardia Act, did not strike down these practices because that Act deprived them of jurisdiction.<sup>17</sup> This Act has been considered to be a license for these practices.<sup>18</sup> This should certainly not be true; the legislature has the duty of protecting the consumer from this type of exploitation. Professor Slichter has pointed out:<sup>19</sup>

"Avoiding the wasteful use of labor is an obligation which both the employer and the union owe to the community. The employer may be able to pass on to consumers the cost of make-work rules, but this does not alter the fact that such rules lower the standard of living of the community by limiting the amount which the labor force is permitted to produce."

The destructive effect of these practices is not greatly alleviated by the Labor Management Relations Act of 1947. Only a very partial halt to them was declared by that legislation. The provisions of the statute against such practices should be revised and broadened. The reference is to Section 8 (b) (6) of the Labor-

<sup>14</sup> *Wall Street Journal*, October 10, 1947.

<sup>15</sup> Slichter, *The Challenge of Industrial Relations* (1948), pp. 28-39.

<sup>16</sup> See: *Barr v. Essex Trades Council*, 53 N. J. Eq. 101 (1894); *Opera on Tour, Inc., v. Weber*, 285 N. Y. 348 (1941); *Rutan v. Local Union*, 97 N. J. Eq. 77 (1925); *United States v. Corrao*, 37 F. Supp. 191 (N. D. Ill. 1941). *Ad'd sub nom. United States v. International Hod Carriers District Council*, 313 U. S. 539 (1941); *Morland Theatres Corp. v. Portland Moving Picture Machine Operators Union*, 140 Ore. 35 (1932); *Haverhill Strand Theatres, Inc., v. Gillen*, 229 Mass. 413 (1918).

<sup>17</sup> See: *United States v. International Hod Carriers District Council*, 313 U. S. 539 (1941); *United States v. American Federation of Musicians*, 63 S. Ct. 665 (1943).

<sup>18</sup> Van Arkel, *Social Action*, p. 12, April 1948.

<sup>19</sup> Slichter, *The Challenge of Industrial Relations* (1948), p. 59.

Management Relations Act, which makes it an unfair labor practice for a labor organization or its agents:

"To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or are not to be performed."

This section has been effective to the limited extent of its applicability. It does not prevent unions from compelling the performance of certain work, though not wanted or needed by the employer, and requiring payment therefor. To accomplish a real correction of the destructive practices which still remain, the law should be broadened to eliminate all of the different types of practices listed above. The responsibility in this regard has been expressed by Slichter as follows:<sup>20</sup>

"In large part, the responsibility of helping the trade union movement to develop cooperative rather than militant policies and to become an instrument for interesting workers in the broad problems of the community rather than making workers narrow and parochial rests upon the community itself. It is important that the community be quick to assert the interests of the general public and that it impose high standards of behavior upon both the employers and unions. Some of these standards have already been suggested. For example, the community should have a way of challenging make-work rules or restrictions on technological change which are introduced into trade agreements."

#### SECONDARY BOYCOTTS

A secondary boycott exists when a union attempts to put pressure on an employer by the use of strikes or other economic force against suppliers or customers of the employer, although there is no dispute existing between the union and the supplier or customer.

Secondary boycotts have been used to bring pressure upon an employer, through his customers or suppliers, to force him to recognize the union as the bargaining agent of his employees, to force him to agree to a closed shop or union shop, to compel him to cease recognizing another union which has been selected by his employees as their bargaining agent, to enforce a wage or other bargaining demand against him, etc.

Types of secondary boycotts and the reasons for the use of this technique by unions can be illustrated by describing those that were involved in litigation under the Labor Management Relations Act:<sup>21</sup>

(1) Refusal by longshoremen to load or unload or operate tugs for employers not connected with a dispute to require motor carrier operators to cease shipping trailers over the road and to compel said operators to ship trailers by boat.

(2) Strike by employees of motor carrier to compel motor carrier to cease leasing equipment to another motor carrier who did not employ members of striking union.

(3) Strike and picketing by employees of department store to force store to cease doing business with contractor with whom union had dispute.

(4) Union inducement of strike without formally calling strike to force employer to cancel contract with nonunion contractor.

(5) Refusal by a union to permit its members, employees of wholesale liquor distributors, to handle products of a distiller with which the affiliated union had a dispute.

(6) Concerted refusal by glaziers union to furnish men to employers using preglazed articles and union inducement of members not to work for employers handling preglazed articles, by rules and regulations providing penalties in order to force employers to cease using preglazed products manufactured by other persons.

(7) Oral inducement of employees of other employers to refuse to handle freight of motor carrier with whom the union had a labor dispute.

(8) Order to union members to stop work on a house to compel cancellation of agreement with store for installation of floor covering by nonunion employees.

(9) Instructions by union to its members employed by telegraph company to refuse to handle messages for cable companies, whose employees, members of the union, were on strike.

(10) Instructions by union to its members employed by other employers to refuse to handle freight of company with which union had dispute.

<sup>20</sup> Slichter, *The Challenge of Industrial Relations* (1948), p. 174.

<sup>21</sup> Report of Joint Committee on Labor Management Relations (December 31, 1948), pp. 24-27.



(11) Inducing employees of subcontractor to refuse to work on job of an "unfair" general contractor by instructions, an "unfair list," and union discipline.

(12) Union inducement of employees of die manufacturer not to work on dies in order to compel die manufacturer to cease doing business with an employer.

(13) Threats of violence, road blocks, and mass picketing to induce construction company employees to refuse to work on a construction job at a mine to force the mine owner to recognize a union.

(14) Coercion and physical assault upon employees of railroad by oil workers union to induce such employees to refuse to handle shipments to and from struck oil refineries in order to force railroads to cease doing business with the struck refineries.

(15) Mass and other picketing of dry docks to induce dry dock workers to refuse to work on ships of struck employers in order to force dry docks to cease doing business with struck employers.

(16) Picketing construction site of prefabricated house and publishing "we do not patronize" list to force contractor to cease purchasing prefabricated houses from manufacturer with whom union had a dispute.

(17) Picketing trucks and freight cars containing "hot goods" to induce employees of trucking and terminal companies to refuse to handle products of struck company.

(18) Picketing of construction site by Building Trades Council to force cessation of business with a subcontractor with whom only one of the affiliated unions had a dispute.

(19) Picketing of railroad tracks and public loading platform and threats to railroad employees by teamsters union to induce railroad employees and others to refuse to handle freight of rice milling company with whom teamsters had a dispute.

(20) Picketing of customers and threats of discipline to customers' employees to induce them not to handle products of boycotted company.

(21) Picketing of job site on which nonunion subcontractor was employed to induce employees of other subcontractors to strike solely to force cancellation of nonunion subcontractor's contract.

(22) Picketing of gate of struck plant used exclusively by employees of contractor erecting an addition to struck plant to force contractor to cease doing business with struck employer.

(23) Picketing by Building Trades Council of place of business of employer with whom union affiliated with Council had dispute for purpose of inducing employees of other employers to refuse to make deliveries to picketed employer.

(24) Picketing of dock owned by struck employer, but leased to charging party, to induce charging party's employees to refuse to work in order to force discontinuance of leasing arrangement.

(25) Picketing stores using delivery service to induce employees of stores not to work in order to force stores to cease using the delivery service.

(26) Use of "unfair" list to induce employees to refuse to work with another employer.

Secondary boycott practices are found in labor contracts in provisions wherein the union refuses to work on "hot goods" or "struck work" or for "an unfair employer" because that employer purchases non-union-made goods, or deals in some other way with an employer whose employees have not chosen to be represented by a union, or an employer engaged in a dispute with a union.

The individual injured by the secondary activity of the labor union is generally one who has contracts to buy or sell goods made by the other employer, assumed in good faith and in the ordinary course of business and without knowledge of any labor controversy or lack of a union in the other employer's plant.

Such individuals should be protected against such losses, since they are powerless to remedy the situation without serious harm to their business or without being subject to legal liability. Moreover, why should employees who do not desire to join a union be coerced into joining by the inability of their employer to sell the goods they make, unless they join? In addition, secondary activity which involves a strike will spread the destructive effects of the strike beyond the limits necessary to bring substantial economic pressure upon the employer directly involved. There is no unlimited right to strike even though the labor leaders proclaim loudly that any limitations on strike activity are a form of involuntary servitude. A noted jurist, Vice Chancellor Bigelow of New Jersey, has said:<sup>22</sup>

<sup>22</sup> *State of New Jersey v. Traffic Telephone Workers Federation of New Jersey*, 22 L. R. R. M. 2469 (N. J. Ch., Sept. 10, 1948).



"The Union suggests that there is an inherent right to strike, a right beyond the reach of the State. I know of no such right when the strike will cause great injury to the public. In my opinion, the adoption of the Union's view in this respect might lead to national disaster. It is hardly too much to say that the uncontrolled and unlimited right to strike is the right to destroy the State, a right which I am certain very few, if any, members of the Union desire."

Union leaders urge that they should be permitted to strike against employers not directly involved in a dispute, arguing that one group of wage earners should be permitted to assist another by secondary activity, to bring the maximum amount of economic pressure upon the employer directly involved in the dispute. This argument, carried to its extreme, could justify a national strike since the economic relationships of business enterprises may extend throughout the nation.<sup>23</sup>

We have here clearly the problem of balancing the public injury caused by strike activity against the interests of the employees of the particular employer alleged to be unfair. By preventing secondary activity, public injury has been limited, but the employees directly involved in a dispute are still permitted to strike against their own employer if they believe such action necessary.

In 1947, President Truman, in his message to Congress, stated that there should be legislative restrictions against "unjustifiable" secondary boycotts. The question, therefore, is what type of "secondary boycott" is "justifiable." Union leaders maintain that they should have the right to use the secondary boycott where an employer is processing goods for a company whose employees are on strike, or where an employer is supplying the customers of another company whose employees are on strike. These leaders claim that a boycott under such circumstances is "justifiable." There are difficulties with such a distinction. In a boycott action, employees participate who are not directly involved in the controversy and who have no knowledge of its merits or demerits. Great economic loss is caused innocent persons. It seems reasonable that, in an effort to balance the destructive effect of union action within the economy, it should be confined to direct action against the employer with whom the controversy exists.

It should be noted that the Labor Management Relations Act has not outlawed agreements between employers and employees containing "struck work" or "hot goods" clauses, but economic compulsion on employers to enter into such agreements is no longer permitted. Where such agreements cannot be reached without a strike, the use of economic pressure to obtain such an agreement is made an unfair labor practice by Section 8 (b) (4) (A), and where unions indulge in activity to force any employer or other person to cease dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any person, the resulting damages become subject to legal action under Section 303 of the Act.

#### SYMPATHETIC STRIKES

The sympathetic strike is a strike against an employer not directly or indirectly involved in a labor dispute. It is distinguished from secondary strikes because in the latter type of strike, the employer is selling to or buying goods from the allegedly unfair employer, but in the former he is not. Frequently these strikes are purely political in their nature.<sup>24</sup> Their destructive effects within the economy are such that a prohibition of this type of activity is a necessary aspect of public policy. The use of political strikes in France has repeatedly been a threat to the economy of that country. We should not permit the same condition to arise here. It is not an important enough tool in union bargaining to justify its continued use when its injury to the economy is considered.

The Labor Management Relations Act does not curb the purely sympathetic strike. Legislation to fill this gap in the present law should be enacted.

#### JURISDICTIONAL STRIKES

Jurisdictional disputes have long been one of the most paralyzing devices used against industrial efficiency. Particularly in craft labor organizations there has

<sup>23</sup> The extent to which unions carry out boycott tactics may be international in scope. In August 1948 the C. I. O. American Communications Association blocked delivery of several hundred cablegrams from Mexico by imposition of a "quota" system, to support a strike of a Mexican cable workers' union. It was reported that the Mexican union was demanding a 75% wage increase, and the right to control the hiring of all personnel and the direction of assignments. *Chicago Tribune*, August 19, 1948.

<sup>24</sup> An example of this was the walkout of the coal miners in 1947 in protest against enactment of the Labor-Management Relations Act. Also, the Longshoremen's Union, C. I. O., in 1946 refused to load cargo destined for France to support political strikes of French unions.

arisen an almost ludicrous series of limitations based on work jurisdiction imposed upon employers through concerted economic action by employees. President Truman, referring to jurisdictional strikes, said in his State-of-the-Union message on January 3, 1947:

"In such strikes the public and the employer are innocent bystanders who are injured by a collision between rival unions. This type of dispute hurts production, industry, and the public—and labor itself. I consider jurisdictional strikes indefensible.

"The National Labor Relations Act provides procedures for determining which union represents the employees of a particular employer. In some jurisdictional disputes, however, minority unions strike to compel employers to deal with them despite a legal duty to bargain with the majority union. Strikes to compel an employer to violate the law are inexcusable. Legislation to prevent such strikes is clearly desirable.

"Another form of interunion disagreement is the jurisdictional strike involving the question of which labor union is entitled to perform a particular task. When rival unions are unable to settle such disputes themselves, provision must be made for peaceful and binding determination of the issues."

Where jurisdictional disputes between unions lead to strikes and other interruptions of production, the employer is a helpless onlooker, and the investors and consumers affected thereby suffer heavy losses. Even the noncraft type of labor union struggles for control over the employees of a particular employer have led to serious loss to all concerned. Furthermore, the employees involved in the controversy are not directly benefited by an interunion squabble. One of the most articulate spokesmen for the unions on labor legislation, Mr. Gerhard P. Van Arkel, has said,<sup>25</sup> "Union representatives will not defend jurisdictional strikes." Therefore, there should be no basic disagreement with the part of the Labor Management Relations Act that protects the employer against the effects of this type of activity.<sup>26</sup> This limitation is found in Section 8 (b) (4) (D), which makes it an unfair labor practice for a union to force or require an employer "to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, rather than to employees in another labor organization or in another trade, craft, or class \* \* \*" and Section 8 (b) (4) (C), which makes it an unfair practice for a union to force or require an employer "to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9."

If strike techniques in a jurisdictional controversy are used and damage results, an additional remedy is provided by a lawsuit for damages under Section 303 of the Act.

#### INTERFERENCE WITH PRODUCTION PLANNING AND ADMINISTRATIVE FUNCTIONS OF MANAGEMENT

Management consistently argued during the period of the Wagner Act that it could not conduct industrial operations efficiently with supervisory personnel represented by unions which also represented the employees subject to their supervision. Under the Wagner Act, supervisors occupied the peculiar status of both employer and employee. The National Labor Relations Board's consideration of the problem of supervisory employees reflected the sensitive balance of the competing factors. The Board at first accorded bargaining rights to supervisory employees. Subsequently, in the *Maryland Dry Dock Company* case, it reversed its position. In the *Packard Motor Car* case, it again reversed itself and conferred bargaining rights upon supervisory employees. On this position, the Board was sustained by the Supreme Court of the United States.

The Labor Management Relations Act has read out of the law the ruling of the Supreme Court in the *Packard* case. Section 2 (3) of the Act provides that the

<sup>25</sup> *Social Action*, April 1947, p. 11.

<sup>26</sup> The jurisdictional disputes which plagued the building and construction industry for years were settled without strikes under the Labor-Management Relations Act. The provisions of the Act caused the unions to establish the joint board for the settlement of jurisdictional disputes, which has resolved these controversies in a manner satisfactory to the parties. Without the provision of the Act on jurisdictional disputes this board would not have been established. *Report of Joint Committee on Labor-Management Relations* (Dec. 31, 1948), p. 4. The Chicago Federation of A. F. L. unions passed a resolution that there are to be no more jurisdictional strikes because the Labor-Management Relations Act subjected the participating unions to penalties. *Daily Labor Report* (1947), Nos. 185, 190.

term "employee" shall not include "any individual employed as a supervisor." In denying to supervisory employees the status of employees within the meaning of the law, the Taft-Hartley law has recognized that, in the interest of efficient operations, divisions of loyalty between employer and union on the part of supervisory employees must be eliminated and a line of demarcation drawn. Employers are not foreclosed from bargaining collectively with supervisors, but are no longer compelled to do so.

THE LABOR MANAGEMENT RELATIONS ACT HAS NOT REVIVED "GOVERNMENT BY INJUNCTION"

The statute provides that, where the Board issues a complaint charging unfair labor practices, it may petition the district courts of the United States for a temporary injunction restraining the activities complained of until the Board renders a final decision in the unfair labor practice case. In addition, where investigation reveals a basis for the issuance of a complaint charging certain specified types of unfair labor practices, such as an unlawful secondary boycott or jurisdictional strike, the investigating officer must petition the court for a temporary injunction. In such event, the interested parties are given a full opportunity to appear and argue before the court, and any injunction issued remains in effect only until the Board makes a final disposition of the unfair labor practice proceeding.

The chief argument used by the unions against the injunction provisions of the Act is that in practice this will lead to a trial of unfair labor practice cases against unions in the courts, rather than before the Board, and thus to a revival of "government by injunction" and weakening of the Norris-LaGuardia Act.

This argument completely ignores the fact that Sections 301 and 303 of the Act, which authorize court actions, do not confer upon private parties the right to obtain injunctions in the federal courts. The Norris-LaGuardia Act remains in effect with respect to such actions, and neither employers nor unions may obtain injunctions in labor disputes under these sections,<sup>27</sup> nor may the courts enjoin unfair labor practices.<sup>28</sup> Interestingly enough, the leading case in which suit was brought to enjoin an unfair labor practice was brought in the *Amazon Mills* case by a union. Injunctions were also obtained by the National Labor Relations Board, upon petitions filed by unions, against General Motors Corporation and Boeing Aircraft Corporation.

The Government remains the sole agency permitted to seek injunctive relief under the Act, except under Section 302 relating to restrictions on payments to employee representatives. Moreover, the injunctive power in the hands of the Government may be used to the same extent against employers as it may be against labor organizations. The Act does not take from the National Labor Relations Board authority finally to determine unfair labor practice proceedings. The only function of a court in such cases is to maintain the status quo until the Board can proceed to a final determination.

The actual facts convincingly demonstrate that the unions' charges with respect to the use of injunctions are unfounded. From September, 1947, through November, 1948, 4,136 unfair labor practices were filed against employers and 1,188 against unions. Only 660 of the charges filed against unions were filed by employers; the rest were filed by individual employees or other unions. There were 342 charges involving secondary boycotts filed during approximately the same period; the National Labor Relations Board filed petitions for injunctions in only 31 of these cases. Only 15 injunctions against secondary boycotts were issued. The Board petitioned for injunctions in only 6 unfair labor practice cases, not involving secondary boycotts; of these 2 were against employers.<sup>29</sup>

Americans are free people and the protection of the rights of individuals is a basic American principle. Although this basic principle is expressed in the Bill of Rights of the Constitution, it has frequently been flouted by unions exercising vast control over the employment of millions of workers.

<sup>27</sup> *Bakery Sales Drivers Union v. Wagshal*, 333 U. S. 437; *Amalgamated Ass'n. v. Dirie Motor Coach Co.*, 23 L. R. R. M. 2092 (USCA, 8th); *Alcoa Steamship Co. v. McMahon*, 23 L. R. R. M. 2051 (S. D. N. Y.); *United Packinghouse Workers v. Wilson & Co.*, 22 L. R. R. M. 2051 (S. D. N. Y.); *Gerry v. Superior Court*, 194 P. (2d) 689 (Calif.).

<sup>28</sup> *Amazon Cotton Mills v. Textile Workers*, 21 L. R. R. M. 2605 (USCA, 4th); *Amalgamated Ass'n. v. Dirie Motor Coach Co.*, supra; *International Longshoremen's Union v. Sunset Line & Trine Co.*, 21 L. R. R. M. 2635 (N. D. Calif.); *Bakery & Confectionery Workers v. National Biscuit Co.*, 22 L. R. R. M. 2304 (E. D. Penn.).

<sup>29</sup> *Report of the Joint Committee of Labor-Management Relations* (December 31, 1948), pp. 22-30.



The Lincoln view of the superiority of human rights over property rights has become a cliché when used by unions to attack management. But the use of mass picketing, violence, and threats of unemployment against employees who oppose union policies demonstrate that unions take a shallow view of individual rights when their own power is being exercised. The well-being of a democratic industrial society which proclaims the dignity and freedom of the individual cannot be preserved unless individual workmen are permitted real freedom and their basic rights are protected. Much of the obedience to union dictates by individual workmen comes from the fear of loss of employment through union fiat. Fear cannot be justified as a necessary technique for enforcing collective action in our society.

An appraisal of labor legislation must include an analysis of the risk to individual freedom, and, to the extent that legislation can prevent individual rights from infringement, it is the responsibility of the legislature to enact such legislation.

The significant interferences with individual rights are the following:

#### FORCING THE LOSS OF AN INDIVIDUAL'S JOB AS A PENALTY

Unions have long escaped scrutinization of their internal affairs on the theory that they are "voluntary associations" in the manner of lodges, churches, fraternities, or civic societies. The validity of this concept, however, may be questioned, because unions, once they have made membership in the union a condition of employment, obtain the power to cause an employee to lose his job. Harry Shulman, the permanent umpire under the union shop contract between Ford Motor Company and the U. A. W.-C. I. O., stated in an arbitration award:<sup>30</sup>

"The primary and historic purpose of labor unions is, of course, to increase the workers' bargaining power and to protect them in their relations with their employers. But since unions, too, are managed by fallible and mortal human beings, there is need, at the same time, to safeguard the worker's interests in his relation to the union. This is increasingly true as unions grow in power and importance. The discharge of a worker by an employer leaves him free to take a job with some other employer. But the expulsion of a worker from membership in a union may disable him from finding any work in the community or industry."

Unions traditionally make "conduct unbecoming a union member" and similar vague tests grounds for expulsion from the union. Where union shop or closed shop conditions exist, such conduct means loss of a job.

An examination of 81 union constitutions showed the following offenses were punishable by expulsion: slandering an officer, 29 unions; creating dissension, 15 unions; undermining the union or working against its interest, 20 unions; action that is dishonorable or might injure the labor movement, 25 unions; circulating written material dealing with union business without permission of the general executive board, 21 unions.<sup>31</sup> A provision of a union constitution which is an example of the vague type of standard applied by the union trial committee is the following:<sup>32</sup>

"Any member or members of Local 243 circulating or causing to be circulated in any manner any false or malicious statement reflecting upon the private or public conduct, or falsely or maliciously attacking the character, impugning the motive, or questioning the integrity of any official of the Local, or any member of the Local shall be deemed guilty of conduct unbecoming a member and subject to fine, expulsion, or both, subject to the approval of the membership.

"(2) Any member using profane language or engaging in personal arguments or intoxication, or refusing to obey the command of the chairman when called to order, while a meeting is in progress, may be fined, suspended, or expelled, as the Local membership may determine.

"(3) Any member who shall make public the proceedings of the Local to outside interests of this Local, or the proceedings of a shop meeting to interests outside that shop meeting, may be fined, suspended, or expelled, as the Local membership may determine."

These loose standards, when enforced by union trial committees, often result in gross injustice. The trial committee of the union has power to define the offense and establish the penalty. The functions of legislation, execution, and

<sup>30</sup> *In re Ford Motor Co. and U. A. W.-C. I. O., Local No. 906*, 14 L. R. M. 2625 (1944).

<sup>31</sup> Philip Taft, "Judicial Procedure in Labor Unions," *Quarterly Journal of Economics*, May 1945, pp. 370-385.

<sup>32</sup> Reported in *Sargent & Co., Inc.*, 9 War Lab. Rep. 653.



judicial determination are generally hopelessly intermingled. Hence, these union trial committees, operating throughout the country, violate a fundamental principle inherent in the American system for the protection of individual freedom. This principle was announced by James Madison in Federal Paper No. 10 when he said:

"The accumulation of all powers, legislative, executive and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

There is frequently little protection to the employee on trial in the fact that the action of the trial committee may be subject to the approval of a majority of quorum at a union meeting. In the words of Jefferson, "a multitude may sometimes be as wrong as an individual." This is particularly true where the multitude is subject to the dictates and policies of the leaders who are directing the action for which approval is sought.

Trial committees have caused members to lose their jobs for the following reasons:

1. Because an employee testified to the truth in an arbitration proceeding.<sup>33</sup>
2. Because an employee handed out political literature on the street for a candidate unpopular with the union leaders.<sup>34</sup>
3. Because an employee patronized a non-union barber shop.<sup>35</sup>
4. Because a member refused to make a political contribution.<sup>35</sup>
5. Because an employee criticized a union official in open union meeting.<sup>37</sup>
6. Because an employee refused to engage in a strike or slow-down in violation of a contract.<sup>38</sup>
7. Because an employee stated at a union meeting, when war was imminent, that the refused to go on strike because his first allegiance was to his country, rather than to the union.<sup>39</sup>

In the trial committee procedures, as a result of which employees may lose their jobs, there is no due process similar to the type found in our judicial system to protect the rights of the employee. Regardless of the provisions of union constitutions, employees are tried on charges which are unknown to them and to which they can prepare no defense; they are denied proper representation, and the methods of appeal to the court are difficult and expensive.

Again, Arbitrator Shulman, permanent umpire under the contract between Ford Motor Co. and the U. A. W.-C. I. O., has said:<sup>40</sup>

"\* \* \* Since unions too are managed by fallible mortal human beings, there is need, at the same time, to safeguard the worker's interests in his relation to the union. This is increasingly true as unions grow in power and importance.

"The discharge of a worker by an employer leaves him free to take a job with some other employer. But the expulsion of a worker from membership in a union may disable him from finding any work in the community or industry.

"It cannot be assumed that an expulsion from membership is always just."

Arbitrator Shulman answers the union's argument to the effect that these problems are strictly union problems and that the internal procedures of a union are of no concern to anyone except the union members. Shulman terms this union contention reactionary when he said:

"\* \* \* The view is reactionary because it either admits of no possibility of error or injustice in its own action or it admits of no power other than self-control to current such error of injustice. It is the traditional view which was obstructed labor gains and against which labor has constantly fought. It is the view that the right to hire and fire him and the right to run his business

<sup>33</sup> *In re Link-Belt Speeder Corp.*, 2 Lab. Arb. Rep.; *Thompson v. Brotherhood of Locomotive Engineers*, 41 Tex. Civ. App. 176; *Jackson v. United Construction Workers*, Case No. 5824 (Lake County, Ind.).

<sup>34</sup> *Morgan v. Local 1150, United Electrical etc. Workers, C. I. O.*, 16 L. R. R. M. 720 (Ill. Super. Ct.).

<sup>35</sup> *Saturday Evening Post*, May 11, 1946.

<sup>36</sup> Frequently cited is the case of Cecil B. DeMille, who refused to pay a \$1.00 assessment levied by a union to finance a campaign to defeat a proposed bill invalidating the union shop in California, and who was therefor suspended from the union. Since all employers in the industry were under compulsory union membership contracts, Mr. DeMille was excluded from employment in that industry because he refused to contribute to a campaign aimed at defeating a legislative measure which he favored. See: *DeMille v. American Federation of Radio Artists*, 21 L. R. R. M. 2111 (Cal. 1947), cert. denied, 22 L. R. R. M. 2024 (U. S., 1948).

<sup>37</sup> *In re John Wood Manufacturing Co.*, 1 Lab. Arb. Rep. 43.

<sup>38</sup> *In re Ford Motor Co.*, 14 L. R. R. M. 2625; *Ampeco Metals, Inc.*, 16 L. R. R. M. 2569; *Sheffield Steel Corp.*, 28 War Lab. Rep. 121.

<sup>39</sup> *Grand International Brotherhood of Locomotive Engineers v. Green*, 210 Ala. 496, 98 So. 569.

<sup>40</sup> *Ford Motor Company*, 14 L. R. R. M. 2625.

as he pleases is the sole concern of the employer and cannot under any circumstances be submitted to negotiation or arbitration. Such absolutism has narrow scope in industrial relations.

Under current labor legislation, arbitrary discharges under union security contracts are prohibited by limiting this type of discharge to nonpayment of initiation fees and dues. Section 8 (a) (3) (B). The record of arbitrary conduct by union trial committees is so extensive that the limitations contained in current legislation should be continued to protect individual workmen against such abuse of their rights as individuals.

#### IMPROPER COLLECTION AND USE OF FUNDS BY UNIONS

In the industrial form of organization, of which the C. I. O. is the leading exponent, initiation fees have, on the whole, been moderate. Other unions, however, have not exercised the same restraint, and the initiation fee has been used as a means of developing a monopoly of the labor supply. Thus, locals of the bricklayers union and the lathers union are permitted to charge initiation fees up to \$100. The glaziers union in Cincinnati requires an initiation fee of \$400, but the same union in Chicago charges \$1,500. Some locals of the motion-picture operators charge initiation fees of from \$500 to \$600. Such initiation fees are not only unfair to the prospective employee seeking employment, where union membership is a necessity in obtaining a job, but seriously affect the labor supply available, causing wage rates to increase artificially because of the semi-monopoly that results. Under the present statute, Section 8 (b) (5), it is an unfair labor practice to require employees to pay exorbitant initiation fees. The test of what is exorbitant is subject to the Board's discretion. The presence of this power within the Board should eliminate the excessive initiation fee and at the same time have no effect upon legitimate union initiation fees.

In certain situations in the past employers and unions would agree to deduct from the employee's pay envelope union dues, initiation fees, fines, and assessments. Such agreements were often without the acquiescence of the individual members, and the amounts of such deductions sometimes became exceedingly high. Under the current labor legislation, the union is required to obtain from each employee a signed authorization directing the employer to deduct dues (Section 302).<sup>41</sup> Large industrial unions have complied with this provision of the law without jeopardizing their membership. There is no reason for discontinuing this provision. To the extent that unions operate on the principle of "voluntarism," they will be regarded as responsible and desirable components of our society; to the extent that they rely on economic coercion of employees, and force, they seriously weaken their position in the economy.

The law requires unions to file financial reports as a condition precedent to use of the National Labor Relations Board, as a means of preventing improper use of funds (Section 9 (g)). That such a requirement is justified is evident from the statements of union leaders.

Walter Reuther, in a report to the membership (184 D. L. R. E-1), stated:

"The U. A. W.-C. I. O. spends millions of dollars every year. Every dollar comes out of workers' pockets. Spending these workers' dollars is a high trust and must be placed on the soundest possible basis to insure that the membership gets the greatest good for every dollar spent. \* \* \* Any democratic organization that spends millions of dollars should provide machinery for a broad and practical check of expenditures. Such machinery is lacking in our Union. \* \* \*

He noted that funds had been misused, and said: "Such endless waste of union funds is inexcusable."

Objection is made by many unions to the filing of financial information and reports, first, on the ground that such filing requires the disclosure of confidential information, and, second, that in any event, the requirement is onerous and unnecessary.

It should be pointed out that these requirements of the law impose little, if any, additional burden on unions, because they are already required to furnish similar reports under various state laws. The requirement of the law has been criticized on the ground that employers' organizations are not similarly required to file such reports and financial data. This, however, overlooks the fact that

<sup>41</sup> This provision has been construed by the Department of Justice to permit the deduction of initiation fees and assessments, as well as dues. This interpretation has been criticized and points up the need for legislative clarification of this point.

the requirement as to the filing of financial reports is imposed only on unions which are asserting that they are the legal representatives of employees, and have, therefore, acquired the right to bind all employees within the bargaining unit, members and nonmembers alike. Employers' organizations have no such legal right. Fundamentally, the requirement springs from the same type of reasoning which resulted in the requirement that corporations report to their stockholders and to the SEC.

#### LACK OF DEMOCRATIC UNION PROCEDURES

Unions often have on paper a statement of democratic procedure by which their officers are elected. Some unions do not even have such written procedures. With the exception of the International Typographical Union, no unions of importance permit direct election of top-level officers by the membership. Once union officers become installed in office, it is frequently impossible, as a practical matter, for the membership to remove them. This entrenchment inevitably leads to abuse and freedom from responsibility. The voting procedures followed by stockholders in election of officers of a corporation are all prescribed by statute for the protection of the minority stockholders. Should not public policy require that the voting procedures for the election of union officers be regulated by legislation so that the interests of the minority group in a union would be protected. Current labor legislation in no way attempts to correct the abuses which exist in the election procedures followed by many unions. This should be done. Unions which make an effort to follow legitimate procedures should in no way object to such a provision.

#### MAINTENANCE OF LAW AND ORDER

Numerous examples of union violence toward employees, both before and after the passage of the current labor legislation, have been brought to light. Importing of pickets to intimidate employees through mass picketing is one technique. Employees have been beaten and their property destroyed in an effort to intimidate them. Although such conduct is in violation of local statutes, local police have been unable or unwilling to enforce the law.

Present labor legislation should be improved to make such conduct subject to immediate action in the Federal courts. There is no justification, in view of the record of violence which has existed<sup>42</sup> for objection to the strengthening of the law to prevent such violence.

Labor violence breeds a type of attitude which is reflected in the following statements of a union leader during the stockyards strike in Chicago:

"We are going to be the bosses, and on instructions from the international headquarters no one is going into that plant without our saying so. That means no foreman, no office workers, not even Thomas E. himself. \* \* \* We have just one password, 'They shall not pass.' \* \* \* If you see any police around, don't pay any attention to them. Don't worry about the police. We'll take away their guns. We'll take away their stars. We'll take their clubs and rub their heads with them. All we need is numbers out here and we can handle anyone. If they send the Army, we'll bump heads with them and take care of them too. If Truman doesn't look our way, we'll take care of him, also."

Injunctions against violence should almost automatically issue. What person can argue that a court should be restricted in any manner from protecting wage earners from physical harm? The courts cannot direct employees to return to work or even direct the union leaders to order the employees to return to work, except where the strike is in violation of a contract or in violation of law, but the courts should be permitted, upon any showing of violence or threat of violence, to issue an injunction against a continued violation of law so that the local police may enforce the law and the quick remedies which result from a violation of injunction may be made available. Current labor legislation is deficient in protecting the rights of individuals to be free from interference when going to work.

Mass picketing is now an unfair labor practice<sup>43</sup> but the cease-and-desist remedy which follows a hearing has proved ineffectual. In addition to injunctive relief to assist police, the National Labor Relations Board should be given the right to require unions to pay the wages lost by an employee prevented

<sup>42</sup> See Appendix B, setting forth numerous instances of mass picketing and violence by labor unions.

<sup>43</sup> *Sunset Line & Twine Co.*, 79 N. L. R. B. No. 207, 23 L. R. R. M. 1001.



from entering the plant. Such a penalty would correct the situation at once, as unions are extremely cautious about assuming financial liability.

Labor violence cannot be justified on the ground that employees who go through picket lines are "scabs." The right to work is equally and probably more basic and fundamental than the right to strike; and the law should say so in unmistakably clear statutory language. As Mr. Justice Hughes once stated for the Supreme Court:

"It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment (14th) to secure."

If the strike activity at a given plant is for a reason to which individual employees do not subscribe, they should be free to exercise their own choice about returning to work. The use of physical force and violence to make men adopt ideas or beliefs, or to make them act in furtherance of such ideas or beliefs, whether or not they hold them, is abhorrent to the democratic traditions of our country. To permit one group to pursue such a course of conduct is to invite any group to do the same. Destruction of the traditions of individual freedom must be the inevitable result.

Labor strike violence can even threaten Government. Mayor Gordon Kettles and two Dalton, Ga., councilmen resigned after 50 to 60 C. I. O. members and sympathizers took over a City Council meeting and threatened them, to force rehiring of five discharged city employees who were C. I. O. members. W. H. Bartenfeld, a councilman who resigned, said a member of the union told him: "You are not going to leave the City Hall alive unless you reinstate those men."

#### THE COLLECTIVE BARGAINING PROCESS MUST BE PROTECTED

With large labor organizations operating within the country's economy, the problems which arise between employees and unions must be settled by free collective bargaining, or they will have to be settled by government decision. As soon as the Government dictates to unions and managements the decisions which they shall reach, the economy ceases to be a free economy. When every-day decisions are made by the Government, they must be enforced by law; liberty is then gradually lost and a police state results.

The need for real good-faith bargaining and responsibility on the part of the unions is vital and has been recognized by President Truman:<sup>44</sup>

"We must look to collective bargaining, aided and supplemented by a truly effective system of conciliation and voluntary arbitration, as the best and most democratic method of maintaining sound industrial relations."

As the power of labor organizations increases, their bargaining techniques change. In many instances they find themselves able to present their demands to the employers on a take-it-or-leave-it basis. They have demanded that managements violate the law and have struck to enforce such demands. A number of unions, of which the International Typographical Union is the principal one, have adopted the practice of forcing certain changes upon employers without going through the process of negotiating with them. This practice is obviously wrong and, if generally adopted by unions, would destroy collective bargaining. It means that employers have no chance to influence opinion by fact or argument.

Unions were encouraged to take unreasonable positions during the Wagner Act era because there were no penalties against the unions for refusing to bargain in good faith which were parallel to the sanctions against the employer. They were placed in a position to engage in wrongful activities for which no remedies existed.

The interferences with the collective-bargaining process which have been detrimental to its success in solving labor problems have been the following:

#### INTERFERENCE WITH THE SELECTION OF BARGAINING REPRESENTATIVES

All parties engaged in collective bargaining are entitled to be represented by representatives of their own choice. Neither side should be permitted to dominate or interfere with the choice of the representative of the other side. The Wagner Act granted this right to employees. These provisions are continued in the Labor-Management Relations Act. The philosophy of the Wagner Act has been extended somewhat to prevent unions from dictating as to who shall be

<sup>44</sup> *New York Times*, August 16, 1945.



the bargaining representative of the employer. Unions should not object to the fairness of this provision in view of their own statutory rights.

#### LABOR CONTRACTS SHOULD BE ENFORCEABLE TO THE SAME EXTENT AS OTHER CONTRACTS

If the collective bargaining process is to be respected, unions should be subject to penalties if strikes are called in violation of a contract. The union is established for the purpose of collectively bargaining with the employer to obtain concessions from the employer. These concessions are obtained from the employer because the union, during the bargaining process, has the right to call a strike. This power often produces the settlement of differences without a strike. The settlement is most often made at the point which equates the willingness of the employees to strike and the willingness of the employer to permit the strike to occur.

Once the "deal" has been reached, if the union goes on strike in violation of the contract, then management, the consumer, and the investor have lost the basic advantages to them of the contract. Labor contracts are supposed to bring labor peace, and a strike in violation of a contract is inconsistent with that objective.

In many states, prior to the current labor legislation, unions were not considered to be legal entities. Unions could not be held for breach of their contractual obligations.

Under Section 301 of the Labor-Management Relations Act, unions are made suable in federal courts for breach of collective-bargaining agreements. Thus, not only employees, but unions, can now be compelled to answer in the federal courts for violations of contractual commitments regardless of the state in which the strike occurs.

Since enactment of the Labor-Management Relations Act, unions have sued employers in court 19 times for alleged labor contract violations and employers have brought 37 suits of this nature. Generally these suits were dismissed by agreement of the parties and in no case has either party obtained a judgment for damages. These facts demonstrate that neither unions nor employers desire to recover money damages from the other but that the availability of the remedy has encouraged each to act with a deeper sense of responsibility.<sup>45</sup>

The passage of this Act brought at first an intense reluctance on the part of unions to agree to no-strike provisions in collective-bargaining agreements. Many unions, however, did agree, and have not suffered as a result. The number of strikes in violation of contracts has been reduced sharply because the risk involved in such strikes is now too great. This provision of the current labor legislation has contributed greatly to the stability of labor relations. President Truman specifically recognized the necessity for responsibility on the part of unions, when he said in his State-of-the-Union message on January 6, 1947:

"A third practice that should be corrected is the use of economic force, by either labor or management, to decide issues arising out of the interpretation of existing contracts. "Collective-bargaining agreements, like other contracts, should be faithfully adhered to by both parties. In the most enlightened union-management relationships, disputes over the interpretation of contract terms are settled peacefully by negotiation or arbitration. Legislation should be enacted to provide machinery whereby unsettled disputes concerning the interpretation of an existing agreement may be referred by either party to final and binding arbitration."

As a byproduct of Section 301 of the Act, the basic attitudes of union leaders have improved. Responsible union officials have counselled with their union members to avoid strikes in violation of contracts, and the constitutions of certain unions have been changed to permit strikes only upon the authorization of designated union officials. Thus, the statute has done a great deal to stimulate sober thinking within the unions.<sup>46</sup>

<sup>45</sup> *Report of Joint Committee on Labor-Management Relations* (December 31, 1948), p. 2.  
<sup>46</sup> G. L. Patterson, general counsel of the C. I. O. Rubber Workers, told the rank-and-file members at their convention in 1947 that the union's success will depend "largely upon how we behave ourselves under these agreements, for failure to abide by them will encourage employers to resort to the Taft Act." This is a straightforward acknowledgment that the time had arrived when unions must be responsible under the law. Thus, even though union leadership was still crying out that the Taft-Hartley law was a slave-labor bill, the law was having a sobering effect. The Chicago Federation of A. F. L. unions passed a resolution that there were to be no more strikes over jurisdictional questions because the law subjected the participating unions to penalties. This was an action more significant than mere words, and it was joined in by all participating A. F. L. unions except the International Typographical Union. *Daily Labor Report* (1947) No. 185, A-3, and No. 190, A-2.

## THE MEDIATION AND CONCILIATION SERVICE SHOULD REMAIN INDEPENDENT

President Truman has recognized that conciliation of labor disputes is an important factor in avoiding strikes, which are detrimental to the public interest. He explained that:

"Many labor disputes may be settled by a sincere and honest collective bargaining and \* \* \* 'the vast majority of those disputes which are not adjusted by collective bargaining are settled through government conciliation. For example, during the month of October last (1945) 354 strikes were settled by the Conciliation Service and 1,282 labor controversies were adjusted before any work stoppages occurred'."

The Labor-Management Relations Act abolished the Conciliation Service under the Department of Labor and established a new independent agency, the Federal Mediation and Conciliation Service, headed by a Director appointed by the President, with approval of Congress. The duty of this Service is to hold meetings of the parties and to assist them in reaching an agreement. The conciliation activity of the Government is obviously much more effective when the agency is independent of the Department of Labor, which represents the interests of labor. The Conciliation Service must have the confidence of employers as well as unions to be effective. To restore the Conciliation Service to the Department of Labor would certainly destroy some of its present effectiveness. What would the labor unions think of a proposal to put the Conciliation Service in the Department of Commerce? Labor unions might well refuse to use this Service under those circumstances. Conversely, many managements will have less confidence in a Conciliation Service which is part of the Labor Department. No logical argument can be made for a change that might destroy the confidence of one party in a system of conciliation which must be based on confidence.

## UNIONS SHOULD BE REQUIRED TO BARGAIN IN GOOD FAITH

The obligation which the Wagner Act imposed on employers to bargain with representatives of their employees is supplemented in the Labor-Management Relations Act by the corresponding duty of the union to bargain in good faith with employers. The duty to bargain collectively (Section 8 (d)) is defined to mean the obligation to meet at reasonable times, to confer in good faith with respect to wages, hours, and other terms and conditions of employment, and to execute a written contract incorporating any agreement reached, if requested. When a contract is in existence, the duty to bargain collectively includes the obligation to give sixty days' notice<sup>47</sup> of the desire to amend the contract prior to its expiration date; to give notice 30 days thereafter to the Federal Mediation and Conciliation Service, and similar state agencies, of the existence of any dispute; and to observe the 60-day minimum cooling-off period without a stoppage of work.

These duties to bargain in good faith are imposed equally upon unions and employers. Obviously, unions should bargain in good faith. This was recognized by President Truman when he said on December 3, 1945:

"The history of labor relations has proved that nearly all labor disputes can and should be settled by a sincere and honest collective bargaining."

The union leaders do not have much of an argument against this requirement of the law. Gerhard Van Arkel, an acknowledged labor spokesman, has said:<sup>48</sup>

"The requirement that unions bargain collectively is new in the Act. Since Trade Unions exist almost exclusively for the purpose of bargaining collectively, this should not prove an onerous requirement."

No socially defensible argument can be made that the obligation to bargain in good faith imposed by law on the employer should be retained without retention of the parallel requirement of good-faith bargaining on the part of the union.

## MONOPOLY RESTRICTIONS RESULTING FROM COLLECTIVE BARGAINING ARE INJURIOUS TO THE PUBLIC AND SHOULD BE RESTRAINED

Monopoly of any type is contrary to the public interest. Any attempt by a private individual or group of individuals to control any market involves the concept of monopoly; this concept has long been assailed as contrary to the public interest.

<sup>47</sup> The 60-day notice provision has caused some confusion: the language of the statute should be changed to permit strikes in support of wage demands under a contract permitting wage negotiations during the term of the contract. Such a provision would encourage long-term contracts on all subjects other than wages.

<sup>48</sup> *Social Action*, April 15, 1948.

Monopoly comes from the power to control and the devices for monopoly control used by unions are the closed shop and industry-wide bargaining, which has created the so-called national emergency strike problem.

#### MONOPOLIZING A LABOR MARKET BY THE "CLOSED SHOP"

The effect of labor's demand for a closed shop upon the social and public interest in the maintenance of a free employment market must be examined. The closed shop contract is one which requires management to hire union members only, and requires all employees as a condition of employment to remain members of the contracting union. Where membership in the union is limited or restricted, the closed shop creates an artificial scarcity of employees available for employment in the particular trade or craft.

In the *Associated Press* case, the Supreme Court held that the bylaws of the Associated Press were contrary to public policy because their effect was to restrict the entry of new newspapers into the newspaper business. The court reasoned that the bylaws tend to "block the initiative which brings newcomers into a field of business."

The rationale of this decision is clearly applicable to the "closed shop" question. Society is interested in the individual workman's right to have free access to employment opportunities and, in addition, society is interested in seeing that the benefits to wage earners, investors, and consumers in the industrial process are equitably divided. If the consumer's share, which is represented by price, is artificially affected by monopoly control, such control is in violation of the Anti-Trust laws. Precisely the same theory should apply to a monopoly control which is designed to increase the pay going to the wage earner by creating an artificial scarcity in the labor market for a particular skill or craft. On the basis of a rationale similar to the one set forth above, numerous states have outlawed the closed shop as well as other forms of compulsory union membership, and current federal legislation outlaws the closed shop.

It is interesting to note the comment of Justice Brandeis in this respect.<sup>49</sup>

"It is an essential condition of the advance of trade unionism that the unions shall renounce violence, restriction of output, and the closed shop. \* \* \* The American public should not, and will not, accept unionism if it involves the closed shop. They will not consent to the exchange of the tyranny of the employer for the tyranny of the employee.

"I think there is no other man or body of men whose intelligence or whose character will stand in absolute power, and I should no more think of giving absolute power to unions than I should of giving to capital monopoly power."

He also stated:

"The closed shop seems to me opposed to our ideas of liberty, as presenting a monopoly of labor which might become as objectionable a monopoly as that of capital."

The monopoly characteristics of the closed shop become even more apparent where the union involved is a "closed union"; i. e., where membership is severely restricted. By refusing membership to certain classes of individuals, unions have been able to exclude these persons from gainful employment in industries organized under closed-shop contracts.<sup>50</sup>

It is true that the elimination of the closed shop in the current labor legislation<sup>51</sup> has caused intense disappointment to certain powerful labor leaders, but

<sup>49</sup> *The Brandeis Guide to the Modern World*, pp. 139, 140.

<sup>50</sup> Even prior to the Labor-Management Relations Act, the practices of some unions in excluding persons from membership because of race, creed, or color, thereby depriving these persons of employment opportunities under closed-shop agreements, had drawn the fire of courts and State legislatures. See: *Railway Mail Association v. Corsi*, 326 U. S. 88 (1945), sustaining New York Civil Rights Law, § 43 (N. Y. Consol. Laws, c. 6) :

"No labor organization shall hereafter directly or indirectly by ritualistic practice, constitutional or by-law prescription, by outside agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color, or creed, or by regulations, practice, or otherwise deny to any of its members by reason of race, color, or creed equal treatment with all other members in any designation of members to any employer for employment, promotion, or dismissal by such employer."

See also: *Williams v. International Brotherhood of Boilermakers, etc.*, 27 Cal. (2d) 586, 165 P. (2d) 903 (1946); *James v. Marineship Corp.*, 25 Cal. (2d) 721, 155 P. (2d) 329 (1944). In *Wallace Corp. v. N. L. R. B.*, 323 U. S. 248 (1944), the Court ruled that a company may not, under a closed-shop contract, discriminate at the request of the union against employees who had been active previously on behalf of a rival labor organization. For state legislation regulating discriminatory practices by unions, see: Kan. Gen. Stat., § 44-801; Neb. Rev. Stat., § 48-214; N. J. Rev. Stat. c. 25, tit. 118, § 18; 25-12; New York, Civil Rights Law, § 43, N. Y. Consol. Laws, c. 6; Pa. Stat. Anno. (Purdon), tit. 43, § 211.3 (f); Wis. Stat. c. 111, subchapter II. See also: Newman, "The Closed Union and the Right to Work" (1943), 43 Cal. L. Rev. 42.

<sup>51</sup> In 1947 the following states had enacted legislation prohibiting or regulating compulsory union membership (many of them prohibiting all forms of union security): Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Iowa, Kansas, Maine, Massachusetts, Ne-



this fact should not deter clear-thinking men from realizing that the "closed shop" is not a "union security" clause but a device to monopolize the labor market to obtain the same unfair advantages that a price monopoly is designed to obtain.

#### NATIONAL STRIKES

President Truman, in his message to Congress this January, stated that labor legislation should contain certain provisions for handling national strikes in vital industries. Two years previous, on January 6, 1947, the President also said to Congress:

"The paralyzing effects of a Nation-wide strike in such industries as transportation, coal, oil, steel, or communications can result in national disaster. We have been able to avoid such disaster, in recent years, only by the use of extraordinary war powers. All those powers will soon be gone. In their place there must be created an adequate system and effective machinery in these vital fields. This problem will require careful study and a bold approach, but an approach consistent with the preservation of the rights of our people. The need is pressing."

The Labor Management Relations Act provides that whenever in the opinion of the President a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof imperils the national health or safety, he may appoint a board of inquiry to make a preliminary investigation. If the Board supports the President's opinion, the President may direct the Attorney General to seek an injunction against such strike or lock-out for a maximum period of eighty (80) days. The Board of inquiry then reconvenes to act as a fact-finding agency and reports within sixty (60) days to the President the position of the parties and the employer's last offer of settlement. If the dispute is still unsettled, the N. L. R. B. within the next fifteen (15) days must take a secret ballot of employees on whether they wish to accept the employer's final offer of settlement.<sup>22</sup> Within five (5) days thereafter the Attorney General must move to dismiss the injunction and a complete report of the case is to be submitted to Congress.

President Truman has found it necessary to use the machinery in the current labor legislation in six national-emergency disputes. It was used in five different industries during 1948: atomic energy, shipping, coal, meat packing, and telephone. The procedures for handling a national strike situation, as set forth in the current labor legislation, may not be perfect, but they have prevented a series of catastrophes from occurring in this country within the year 1948. If the legislative provisions had prevented only one national catastrophe, their continuance would have been justified.

The problem of national strikes goes deeper than the mere machinery for handling them. They are an outgrowth of the control of one union over an entire industry. This type of control is monopoly control and if business leaders had such control it certainly would be stripped away on the ground that the possibilities of abuse of such power were so great that such control would be contrary to public policy. It is suggested that additions to current legislation be made which would impose the same limitations upon exercise of union power in industry-wide situations. The threat of the abuse of such power to the very existence of the Government was highlighted by President Truman when, in a radio address on the railroad strike of 1946, he referred to the railroad union leaders Johnston and Whitney and said:

"It is inconceivable that in our democracy any two men should be placed in a position where they can completely stifle our economy and ultimately destroy our country. The Government is challenged as seldom before in our history."

#### INDIVIDUALS PLEDGED TO DESTROY A FREE ECONOMY SHOULD BE REMOVED FROM POSITIONS OF LEADERSHIP

Since the Taft-Hartley Act imposed the requirement that union leaders submit affidavits disavowing adherence to the Communist Party or similar organizations as a condition precedent to the use of the facilities of the National Labor Relations Board by their unions, many labor organizations have removed from positions of leadership persons who subscribed to Communist doctrines. Presi-

braska, New Hampshire, New Mexico, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Virginia, Wisconsin. The right of a State to enact laws prohibiting the closed shop was recently sustained by the Supreme Court of the United States. *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 23 L. R. R. M. 2199.

<sup>22</sup> There have been practical difficulties in taking a ballot on the employer's last offer, and all such balloting has resulted in rejection of the last offer. The Joint Committee has recommended elimination of this provision from the law. *Report of Joint Committee on Labor-Management Relations* (Dec. 31, 1948), p. 22.

dent Truman has asserted the desirability of ridding unions of Communist influence. In June 1947, he stated:

"Congress intended to assist labor organizations to rid themselves of Communist officers. With this objective, I am in full accord."

All that was needed to encourage the removal of such leaders was some legislative enactment to make it clear to all that Communists in positions of authority were detrimental to our national interest. This legislation was instrumental in informing the public of the real facts regarding communism in organized labor; and if it had not been enacted, the housecleaning within unions would hardly have gained such momentum and the following portions from an editorial in the C. I. O. News of December 6, 1948, would probably not have been written:

"Give the Commies the boot!

"The C. I. O. has taken a firm stand on that crackpot, vacillating ideology known as Communism.

\* \* \*

"It's time for every trade unionist in the country to take a good, clear look at the Commies, the lads who try to create chaos out of confusion.

"The record is clear—and not difficult to read.

"Reds infiltrated the labor movement, not to advance the cause of straight trade unionism, but to use the union structure for their own purposes if they could.

\* \* \*

\* \* \*

"But there is a need—a pressing need—for taking whatever action may be required to keep the Commies from using unions to advance the party line.

"The task should not be too difficult. The Reds have little real strength and they have been thoroughly discredited.

\* \* \*

\* \* \*

"The things they stand for make their removal from the trade union necessary.

"And there's nothing wrong with baiting Reds!"

The wisdom of this type of legislation needs hardly to be debated. President Truman has "advocated such legislation \* \* \* to enable unions to keep their membership free of Communist influence."

The non-Communist affidavit procedure, which has identified those unions led by Communists, and has caused the replacement of many other union leaders who were Communists, should be continued.

As of November 1, 1948, 176 national and international unions had complied with the affidavit requirements, including 95 of the A. F. of L.'s 105 internationals and 31 of the C. I. O.'s 39 internationals. Fifty unaffiliated labor organizations complied. Refusal by union officers to file non-Communist affidavits has been an issue in a number of union elections which resulted in such officers being denied reelection.

The non-Communist affidavit should be made more effective as an aid to unions in their desire to drive out Communists in positions of power. In addition to officers, all members of policy-forming, governing and negotiating committees should sign such affidavits. Too often a Communist in a union has resigned as an officer but has been continued as a policy-making staff member.

That the anti-Communist provisions of the Act have had a desirable effect is demonstrated by the following data:

(1) The provisions have resulted in the purge from many locals and a growing number of internationals of Communist influence.

(2) One large international union, the Steelworkers-C. I. O., amended its constitution to bar Communists from holding office in the union.

(3) The U. A. W.-C. I. O. was the first great beneficiary of the anti-Communist provisions.

(a) The provisions resulted in a purge of the left-wingers in the union to facilitate compliance and to prevent raids on the U. A. W.

(b) The U. A. W. was unable to engage in a program of raiding Communist-infested non-complying unions, for example, the representation of employees at the Royal Typewriter Company and Niles-Bement-Pond Company was taken from the Communist-dominated U. E.-C. I. O. U. A. W. also gained membership at the expense of Local 65 of the C. I. O. Wholesale and Warehouse Union in New York City.

(c) It is now raiding the Communist-dominated Farm Equipment Workers Union.

(4) Many local unions rid themselves of Communists or seceded from Communist-dominated internationals.

(a) Eleven hundred employees at the Thomas A. Edison plant in New Jersey seceded from the U.E. and formed an independent.

(b) The same happened at such companies as Remington Rand, A. B. Dick, and Dictaphone Corp.

(5) The A. F. L. began to take New York department stores away from the C. I. O.'s Retail, Wholesale and Department Store Union, for example, the Oppenheim-Collins Company.

(6) The pressure against Communists made itself felt within international unions.

(a) C. I. O.'s Department Store Union ordered the immediate expulsion of all officials who would not sign anti-Communist affidavits.

(b) The Industrial Union of Marine and Shipbuilding Workers, C. I. O., voted to require its officers to file the affidavits.

(c) Joseph Curran was able to weaken his Communist opposition in the National Maritime Union.

(d) The Marine Engineers Beneficial Association ousted the district president of its Radio Division because of his refusal to file the affidavits.

(e) The C. I. O. Utility Workers ousted their regional director in California because of refusal to comply with the affidavit provisions.

There are many who are of the opinion that business leaders should also sign non-Communist affidavits. Although there is virtually no evidence of Communist activity or influence among business men, it might be advisable to adopt this suggestion, in order to demonstrate that the anti-Communist provisions are designed to benefit the public generally, rather than business men.

#### POLITICAL ACTIVITIES OF SPECIAL INTEREST GROUPS, INCLUDING UNIONS, ARE PROPERLY MATTERS OF PUBLIC CONCERN

It is a matter of history that certain powerful business groups once exercised tremendous control over political parties. This came in part from the fact that corporate funds were used to support political parties. This political domination has been prevented by legislation, and the auditing of corporate books in connection with corporate income taxes polices this statutory requirement. The Labor-Management Relations Act merely purports to extend the restraints imposed upon corporations to labor unions. The necessity and importance of this development is suggested by the following statement of Louis Waldman, one-time lawyer for Sidney Hillman and a well-known union attorney:

"As long as trade-union leaders confine themselves to the task of raising wages, shortening hours and improving the conditions of employment of their members, their political philosophy is of little concern to the public. But when these unions enter politics, they are seeking public power which may directly affect the life and well-being of every American. In politics, therefore, the union leaders' philosophy of government must be weighed in the light, not of trade unionism, but of the public welfare."

The 80th Congress took notice of the fact that unions had engaged in widespread political activity and that many union members had been compelled to contribute to the election of candidates whom they have personally opposed. It seems reasonable that dues paid by union members of varying political beliefs should not be used for political purposes, for exactly the same reasons that corporate funds should not be used for political purposes. It does not follow that unions should not have the right to editorialize in papers; such expressions are consistent with the ideas inherent in freedom of speech. However, large contributions to political parties should be prevented, and to enforce such rules, union finances, just as corporate finances, should be subject to audit by the Federal Government.

#### CONCLUSION

Changes in labor legislation must be considered with great care. The welfare of our economy is at stake, and we cannot afford to permit prior political promises, threats of political reprisal, or emotional prejudices to cloud our objective analysis.

If ill-considered and hasty legislation is adopted, it could have far-reaching adverse consequences in our foreign relations, as well as on the domestic scene. The following extracts from Economist Slichter should cause us to be extremely cautious in analyzing the hysterical propaganda pressure which will be brought to bear by unions on the Eighty-first Congress. He points out that our economy has changed from a capitalistic to a "laboristic" economy wherein the labor unions have become an all-powerful influence. This transformation continues to occur "at a time when the political and economic institutions of western Europe



(and especially those of the United States) are being attacked through a carefully planned crusade organized by Russia. The object of this crusade is nothing less than the complete overthrow of western institutions."<sup>63</sup>

After noting these facts, he asks these thoughtful questions:

1. Will the new laboristic economy in the United States be able to give the world the kind of economic leadership it needs?
2. Will it effectively stimulate growth of production?
3. In particular, will it provide favorable conditions, not innovators and pioneers?
4. Will it keep production stable?
5. Will it be able to champion effectively the institutions of freedom against the Russian efforts to destroy them?
6. Will the millions of employees . . . appreciate their stake in a vigorous spirit of enterprise, in the rapid accumulation of capital, and in rapid technological progress?

He concludes by saying:

"The truth is powerful and one should not underrate its influence. Certainly it is at least probable that employees will discover their stake in enterprise and progress and *that they will support public policies that foster enterprise.*" [Italics added.]

The rapid growth of unions to their present position of power has been accomplished by the abuse of this power. The national economy cannot stand by and hope that these abuses will of themselves stop. At some time we must make a decision as to whether the American economy is to be regulated in the interest of all its members or in the interest of powerfully organized special interest groups. That time is now. This is no time to bend under propaganda or political pressure, because it may be the last chance to stand firm.

#### APPENDIX A

TABLE 1.—*Distributive shares of the national income of the United States*

[Billions of dollars]

	1929	1939	1946	1947	1948
National income.....	87.4	72.5	179.3	202.5	220.9
Compensation of All Employees.....	50.8	47.8	117.3	127.5	136.3
Wages and Salaries.....	50.2	45.7	117.7	122.2	131.3
Corporations.....	33.1	27.6	68.1	78.5	84.9
Officers.....	3.3	2.7	n. a.	n. a.	n. a.
Other Employees.....	29.8	24.9	n. a.	n. a.	n. a.
Government Employees.....	4.9	8.2	20.7	17.5	18.4
Military.....	.3	.4	7.8	3.9	3.6
Civilian.....	4.6	7.8	12.9	13.6	14.8
Unincorporated, Non-Profit, etc., Enterprises.....	12.0	9.9	23.0	26.3	28.0
Supplements (employer's contributions to Social Security, etc.).....	.7	2.0	5.5	5.2	5.0
Corporations.....	.4	1.4	3.1	3.5	3.4
Government.....	.2	.3	2.0	1.2	1.2
Other Enterprises.....	.1	.3	.4	.5	.4
Corporate Income (excl. inv. val. chg.)*.....	10.3	5.8	16.8	24.7	29.6
Federal Corporation Taxes.....	1.4	1.5	9.0	11.7	13.1
Dividends.....	5.8	3.8	5.6	6.9	7.5
Apparent Retention (incl. inv. val. chg.).....	2.6	1.2	7.2	11.2	13.1
Inventory Valuation Change.....	-.5	.7	5.0	5.1	4.1
Retention Other Than Inventory Valuation Change.....	3.1	.5	2.2	6.1	9.0
Net Interest.....	6.5	4.2	3.4	4.3	4.7
Rental Income of Persons.....	5.8	3.5	6.7	7.1	7.5
Income of Unincorporated Business and Professional People.....	8.6	6.8	20.4	23.2	24.9
Farm Income.....	5.7	4.5	14.6	15.7	17.8

\*Corporate income reported for postwar years is exaggerated as a result of the failure of companies to compute depreciation basis. See "Business Profits Exaggerated" by Professor Sumner H. Slichter, Harvard University, in the *Commercial & Financial Chronicle*, December 8, 1948, and article in the *Journal of Accountancy* for January 1949, by Ralph C. Jones. In the Jones article it is pointed out that industry has not earned dividends in any year since 1941. For a simple illustration that depreciation rates charged in the past are no longer adequate to replace worn-out equipment, consider a taxi driver with a 1944 cab for which he paid \$1,200. If he expected its life to be five years, he should set aside \$240 a year so that in 1949 he would have \$1,200 with which to replace it. But in 1949 he finds that his new cab costs \$2,400. If, during those five years, he has not doubled his depreciation fund by adding an equal amount to "surplus," he must either find new capital or go out of business.

Source: United States Department of Commerce. Data taken from *Survey of Current Business*, July 1948, page 16; and *The Economic Almanac of the National Industrial Conference Board* for 1949, page 95. Estimates for 1948 from United States Department of Commerce reports for first nine months of 1948.

<sup>63</sup> Slichter, *The American Economy* (1948).

TABLE 2.—*Percent distribution of the national income of the United States*

[Corporate profits taxes excluded from total]

	1929	1939	1946	1947	1948
National income (billions of dollars excluding corporation profit taxes).....	86.0	71.0	170.3	190.8	207.8
	Percent of total				
Compensation of All Employees.....	100.0	100.0	100.0	100.0	100.0
Wages and Salaries.....	59.1	67.3	68.9	66.8	65.6
Corporations.....	58.4	64.4	65.6	64.0	63.2
Officers.....	38.5	38.9	40.0	41.1	40.9
Other Employees.....	3.8	3.8	n. a.	n. a.	n. a.
Government Employees.....	34.7	35.1	n. a.	n. a.	n. a.
Military.....	5.7	11.6	12.2	9.2	8.9
Civilian.....	.3	.6	4.6	2.0	1.7
Unincorporated, Non-Profit, etc., Enterprises.....	5.4	11.0	7.6	7.1	7.1
Supplements (employers' contributions to Social Security, etc.).....	14.0	13.9	13.5	13.8	13.5
Corporations.....	.8	2.8	3.2	2.7	2.4
Government.....	.5	2.0	1.8	1.8	1.6
Other Enterprises.....	.2	.4	1.2	.6	.6
Corporate Income (excl. inv. val. chg. and excl. fed. corp. profits tax).....	.1	.4	.2	.3	.2
Dividends.....	9.7	7.1	7.5	9.5	9.9
Apparent Retention.....	6.7	5.4	3.3	3.6	3.6
Inventory Valuation Change.....	3.0	1.7	4.2	5.9	6.3
Retention Other Than Inventory Valuation Change.....	—6	+1.0	+2.9	+2.7	+2.0
Net Interest.....	3.6	.7	1.5	3.2	4.1
Rental Income of Persons.....	7.6	5.9	2.0	2.3	2.3
Income of Unincorporated Businesses and Professional People.....	6.7	4.9	4.0	3.7	3.6
Farm Income.....	10.0	9.6	12.0	12.2	12.0
	6.6	6.3	8.6	8.2	8.6

TABLE 3.—*Purchasing power of distributive shares of the national income of the United States*

[Billions of 1935-39 dollars]

	1929	1939	1946	1947	1948
Cost-of-living index (1935-39=100)*.....	122.5	99.4	139.3	159.2	171.2
National income.....	71.3	72.9	128.7	127.2	129.0
Compensation of All Employees.....	41.5	48.1	84.2	80.1	79.6
Wages and Salaries.....	41.0	46.0	80.2	76.8	76.7
Corporations.....	27.0	27.8	48.9	49.3	49.6
Officers.....	2.7	2.7	n. a.	n. a.	n. a.
Other Employees.....	24.3	25.0	n. a.	n. a.	n. a.
Government Employees.....	4.0	8.2	14.9	11.0	10.7
Military.....	.2	.4	5.6	2.4	2.1
Civilian.....	3.8	7.8	9.3	8.5	8.6
Unincorporated, Non-Profit, etc., Enterprises.....	9.8	10.0	16.5	16.5	16.4
Supplements (employers' contributions to Social Security, etc.).....	.6	2.0	3.9	3.3	2.9
Corporations.....	.3	1.4	2.2	2.2	2.0
Government.....	.2	.3	1.4	.8	.7
Other Enterprises.....	.1	.3	.3	.3	.2
Corporate Income (excl. inv. val. chg.).....	8.4	5.8	12.1	15.5	17.3
Corporate Profits Taxes.....	1.1	1.5	6.5	7.3	7.7
Dividends.....	4.7	3.8	4.0	4.3	4.4
Apparent Retention (incl. inv. val. chg.).....	2.1	1.2	5.2	7.0	7.7
Inventory Valuation Change.....	—4	.7	3.6	3.2	2.4
Retention Other Than Inventory Valuation Change.....	2.5	.5	1.6	3.8	5.3
Net Interest.....	5.3	4.2	2.4	2.7	2.7
Rental Income of Persons.....	4.7	3.5	4.8	4.5	4.4
Income of Unincorporated Businesses and Professional People.....	7.0	6.8	14.6	14.6	14.5
Farm Income.....	4.7	4.5	10.5	9.9	10.4

\*U. S. Bureau of Labor Statistics, Consumer Price Index. 1948 estimate based on eleven months.

## APPENDIX B

## MASS PICKETING AND VIOLENCE

## 1. CLINTON MACHINE COMPANY, CLINTON, MICHIGAN

(Hearing: October 15, 1947)

Following a two-week strike called by Local 608, UAW-CIO, the Clinton Machine Company reopened its plant. Employees attempting to return to work were met by a picket line consisting of about 75 to 100 pickets, three or four feet apart. Some in the picket line were employees of the company and others were not. The president of the company, seeing the entrance blocked, tried to go around the end of the picket line. The pickets charged him and the employees trying to get into the plant and fighting broke out. The president of the company was knocked down and several of those trying to go back to work were injured. The fight was broken up only after the plant guard fired two shots into the air. Although the president had asked for protection on the previous day, there were no policemen at the plant entrance when the back-to-work-movement took place.

After the local failed in its initial attempt to stop workers from getting into the plant, a sound truck blared away threats to "get them when they came out for lunch." Threats were made over the sound truck to "pull out" those working inside.

During the course of the violence, the picket line increased from the original 75 or 100 to 1,800 pickets. Pickets were pressed into service from adjacent plants and other locals and were imported from Detroit, Toledo, Buffalo, and Adrian. Rocks were hurled through windows and several employees were cut by the glass. The captain of the state police, when asked for protection, stated that it would be impossible for his 50 or so men to control the 1,500 or so pickets.

## 2. REMINGTON-RAND COMPANY, BENTON HARBOR, MICHIGAN

(Hearing: October 20, 1947)

On June 21, 1947, the UAW-CIO called a strike at the company's plant employing 375 persons. On the first day of the back-to-work movement, 15% to 16% of the employees reported and were shut out by pickets. 250 pickets blocked the entrance to the plant, but the sheriff was able to open a passage through the pickets that day. Three days after the movement had started, the union threw a picket line of 1,500 around the plant. The pickets blocked the gate, refused to let workers in, and engulfed the police through sheer weight of numbers. The pickets were finally driven across the street and away from the police when a fire hose was connected to the fire hydrant and turned on the pickets.

## 3. HEDDON BAIT COMPANY, DOWAGIAC, MICHIGAN

(Hearing: October 23, 1947)

In July of 1947, the UAW-CIO called a strike at the company's plant which employs 263 employees in the factory. A back-to-work movement was started by the company, and at the end of the first week 50% of the employees were back at work. Here, again, the picket line was increased to block the entrance, windows were broken, and employees beaten up. In addition, the streets leading to the plant were completely blocked by cars parked bumper to bumper.

## 4. THE MEAT PACKING COMPANIES STRIKES

(Hearing: March, 1948)

(a) Pickets denied access to office employees and supervisors at Swift & Company, St. Paul, Minnesota, turned over cars and used violence on supervisors attempting to enter the plant.

(b) Pickets denied all classes of employees admittance to Armour & Company, St. Paul, Minnesota, ignored a state court restraining order limiting picketing, and attacked police attempting to enforce the injunction.



(c) Pickets invaded the Cudahy Packing plant at Newport, Minnesota, and forcibly kidnapped employees sleeping in the plant, beating them with clubs, physically injuring them, and destroyed or damaged plant property and equipment.

(d) At Armour & Company, St. Joseph, Missouri, pickets stopped cars, threw bricks, punctured tires, and turned over cars of employees seeking to go to work.

(e) At John Morrell & Company, Topeka, Kansas, the pickets destroyed property, threw stones, and injured employees attempting to go to work.

(f) At Wilson & Company, Albert Lea, Minnesota, pickets turned over cars and forcibly prevented anyone from gaining admittance to the plant.

(g) At Wilson & Company, Chicago, a union leader announced to the company's employees over a sound truck shortly before the strike date:

"We are going to be the bosses, and on instructions from the international headquarters no one is going into that plant without our saying so. That means no foreman, no office workers, not even Thomas E. himself. \* \* \* We have just one pass word, 'They shall not pass' \* \* \* If you seen any police around, don't pay any attention to them. Don't worry about the police. We'll take away their guns. We'll take away their stars. We'll take their clubs and rub their heads with them. All we need is numbers out here and we can handle anyone. If they send the Army, we'll bump heads with them and take care of them too. If Truman doesn't look our way, we'll take care of him, also."

#### 5. UNION: SEWER, TUNNEL AND MINERS LOCAL NO. 2, AFL, CHICAGO, ILLINOIS

(May 1946)

Pickets, one armed with a pistol, invaded a sanitary district sewer project under construction, rounded up and routed 12 workers who remained on the job after 7 had quit and were later discharged.

#### 6. UNION: IAM; COMPANY: CONSOLIDATED VULTEE CORP., FORT WORTH, TEXAS

(May 1946)

A series of bombings and terrorisms resulted from this labor dispute. The homes of three employees were bombed, and an underground telegraph cable leading to the company's aircraft plant was dynamited.

#### 7. UNION: UAW-CIO; COMPANY: DEARBORN GLASS MANUFACTURING COMPANY, CHICAGO, ILLINOIS

(April 30, 1946)

Police Captain George Barnes charged that strikers had attempted to overturn automobiles of employees attempting to enter the plant. Twenty men were arrested.

#### 8. UNION: AFL, WINCHESTER, ILLINOIS

(November 21, 1946)

An estimated 3,600 farmers patrolled power lines in a nine-county, central Illinois area to guard against vandalism laid to AFL union members. Power lines were cut down and more than 800 farms blacked out, and repair crews attacked by strikers.

#### 9. UNION: TEAMSTERS, AFL; COMPANY: DAIRYLAND COOPERATIVE ASSOCIATION OF JUNEAU, JEFFERSON, WISCONSIN

(October 17, 1946)

Four members of the Teamsters Union, AFL, of Racine, Wisconsin, including the president and the business manager, were jailed after a milk truck was halted, its driver terrorized with gunfire, and 2,000 gallons of milk spilled on the road. The incident followed a strike where the union had demanded recognition as bargaining agent for 63 employees, 15 of whom were on strike. Because of the terrorism, the Association was compelled to halt all shipments to Chicago. Normally, the Association supplies approximately 12,500 gallons of milk per day to Chicago.

10. UNION: TELEGRAPH WORKERS, CIO; COMPANY: WESTERN UNION, NEW YORK CITY

(February 5, 1946)

Fists, bricks, tiles, and police bullets flew as violence marked the end of the fourth week of the Telegraph Workers' strike at Western Union involving 7,000 employees. The large plate glass window at the Western Union branch office at 1440 Broadway was shattered by building tiles flung from a speeding station wagon. 600 strikers and sympathizers were in the picket line. At a hearing following the strike, six employees testified that they had been hit, kicked, reviled, and spat upon as they attempted to make their way into the company building.

11. UNION: UAW-CIO; COMPANY: GENERAL MOTORS ELECTRIC-DIESEL PLANT, CHICAGO, ILLINOIS

(February 5, 1946)

A temporary restraining order was issued against the union by Judge Donald S. McKinlay of the Superior Court of Cook County, because of violence during a strike at the plant. Pickets turned over two autos, broke windows in other cars, and refused to permit employees to enter the plant. Police were unable to maintain order.

12. UNION: UAW-CIO; COMPANY: W. A. JONES FOUNDRY & MACHINE COMPANY, CHICAGO, ILLINOIS

(February 21, 1946)

Flying squadrons of CIO union members wearing white steel helmets barred passage to nonstriking employees trying to return to work. Automobiles bearing the sign "Flying Squad" on their windshields drove up near the plant, and each unloaded two to six members of other CIO locals who joined the picket line. The company subsequently filed a suit for an injunction.

13. UNION: UE-CIO; COMPANY: UNITED STATES MOTOR PLANT, LOS ANGELES, CALIFORNIA

(January 18, 1946)

24 persons, including a woman who was once the Communist party candidate for state senator and a CIO official, who admittedly had joined the Communist party, were arrested after police broke up a riot of 500 strikers, members of the UE. Pickets of the UE, reinforced by pickets from a General Motors plant, formed picket lines 6 abreast in front of the plant. As the office workers, who were not involved in the strike, waited across the street, a policeman read aloud a court order restraining the workers from mass picketing. The pickets were prepared for a battle. Some wore asbestos gloves and most wore white helmets. The police at first opened the picket line, but the secretary of the CIO Industrial Council and regional director, who had admitted to a state committee probing un-American activities that he was a member of the Communist party, exhorted the pickets to stand firm. The battle then began.

14. UNION: UAW-CIO; COMPANY: ALLIS-CHALMERS MANUFACTURING COMPANY, MILWAUKEE, WISCONSIN

(October 29, 1946)

Pickets clashed with workers and officers in a bloody melee continuously. A group of 100 men went from the union meeting to the plant, where they hurled a barrage of fist-size stones that shattered windows in a gatekeeper's tower and broke more windows in the plant. "They overcame us by force," the captain of the Police Department said. "They out-numbered us and there was nothing we could do."

15. UNION: MINE, MILL & SMELTER WORKERS, CIO; COMPANY: ANACONDA COPPER MINE COMPANY, BUTTE MONTANA

(April 15, 1946)

Gangs of about 500, armed with axes, wrecked the homes of 4 miners who refused to join a CIO walkout from the plant of the company. Two boys were wounded by stray bullets fired by the strikers.

16. UNION: HOTEL AND RESTAURANT EMPLOYEES, AFL; COMPANY: STAUFFER'S CAFE,  
MINNEAPOLIS, MINNESOTA

(December 17, 1946)

Damage estimated at thousands of dollars was caused when a dynamite blast in the heart of the downtown section blew out the front of a restaurant having labor difficulties with the union. Police said the blast resulted from the explosion of at least a dozen sticks of dynamite in the doorway of the restaurant. Hundreds of windows were shattered in nearby buildings and windows were rattled in buildings a half mile away. A hole two feet deep was ripped in the concrete floor of the restaurant doorway. An election among the employees to determine whether they wished to be represented by the union had been held a month previous and resulted in a defeat for the union by a vote of 82 to 39.

17. UNION: DISTRICT 50, UMW; COMPANY: CONLEY BUS COMPANY, SALYERSVILLE,  
KENTUCKY

(June 19, 1946)

Eight bullets struck a passenger bus going west, and a short time later an east-bound bus was hit three times by bullets: No one was hurt, but one bullet hit the back of the seat in which a relief bus driver was sitting. The strike arose out of an attempt of the CIO to organize the company's drivers, although the company had a contract with District 50 of the Mine Workers.

18. UNION: UNITED STEEL WORKERS, CIO; KENTLAND, INDIANA

(June 14, 1946)

An employee was attacked by pickets and ejected from a bus in Gary, Indiana. According to his testimony, he was knocked to the floor and kicked in the back when he refused to leave the bus, when ordered to do so by United Steelworkers, CIO, pickets. The court awarded him \$20,000 in damages.

19. COMPANY: PACIFIC PRESS, LOS ANGELES, CALIFORNIA

(June 11, 1946)

The company charged union pickets with stench bomb attacks on the homes of some of their workers and the plant, and with knocking down and kicking an employee who was a partially disabled war veteran.

20. UNION: UAW-CIO; COMPANY: AMERICAN AUTOMATIC DEVICES COMPANY, CHICAGO,  
ILLINOIS

(October 4, 1946)

Fifty policemen, out-numbered four to one, battled hand-to-hand with rioting pickets. At least eleven people were injured. 35 pickets were jailed; 5 employees, four of them women, were given first aid after fighting their way through the rioters. An automobile was overturned and at least 6 policemen were injured. Many more were spattered by rotten eggs hurled by pickets.

21. UNION: UAW-CIO; COMPANY: FLOYD RICE AGENCY, DETROIT, MICHIGAN

(August 23, 1947)

A flying squadron of 200 pickets stormed an automobile agency and threatened to kill the employees and wreck the building, but were restrained by two workers armed with rifles, until police arrived and dispersed the invaders. It was the second day the roving bands of pickets had clashed with authorities in the four-day strike. Employees were told by pickets to "get out of here before we kill you and tear the place apart, brick by brick."

22. UNION: UAW-CIO; COMPANY: BUICK, CHEVROLET AND FORD SALES AGENCIES,  
DETROIT, MICHIGAN

(August 22, 1947)

Pickets battled their way into their Repair Department of the Veer Hoven Chevrolet Agencies, main branch, slugged three men at work and ejected ten



others. They then appeared at the Highland Park branch and attempted to drive a car into the garage through a line of four policemen. They smashed the plate glass window and smaller panes.

23. UNION: MESA; COMPANY: TOOL VENT METAL AWNING CORPORATION, DETROIT, MICHIGAN

(October 8, 1947)

Three unionists were accused of beating Alfred Krohn, installation manager of the struck company, after enrbing a truck and dragging him out of it. Krohn named the union's business agent and two others as his attackers.

24. UNION: CIO; DALTON, GEORGIA

(October 8, 1947)

The mayor of the city and two of the city's four councilmen resigned after a mob of 50 to 60 CIO members and sympathizers took over a city council meeting, threatened the council members, and forced them to order the rehiring of five discharged city employees who were CIO members. Councilman W. H. Bartenfeld, one of those who resigned, told newspapermen that a member of the union told him, "You are not going to leave the city hall alive unless you reinstate those men."

25. JACKSON, MISSISSIPPI

(November 12, 1947)

Governor Wright called the state legislature into a special session to consider means of combating labor violence. The meeting was called because of state-wide violence in a prolonged bus drivers' strike. Several buses had been fired upon and stoned, and a bus station in Hattiesburg, Mississippi, was blasted with dynamite.

26. UNION: NMU; COMPANY: JUPITER STEAMSHIP COMPANY, CHICAGO, ILLINOIS

(March 25, 1948)

Forty men wielding clubs and scrapers invaded the 7,000-ton freighter *Jupiter* at its Chicago River dock, beat its crew, ate its food, and escaped. They climbed aboard the ship and drove the crew off.

27. UNION: UE-CIO; COMPANY: UNIVIS LENS COMPANY, DAYTON, OHIO

(June 16, 1948)

Despite a court injunction against restraining workers from entering the plant, a mob of 200 to 250 pickets engaged in rough and tumble street fighting with approximately an equal number of employees trying to enter the plant. Not a single worker got inside the plant. Dayton police stood passively by. The pickets threw stench bombs and fought both police and workers. The police also reported that a chemical smelling like skunk oil had been sprayed about the picket line, sending 11 persons attempting to enter the plant to the hospital.

28. UNION: MINE, MILL & SMELTER WORKERS, CIO; COMPANY: AMERICAN ZINC OXIDE PLANT, COLUMBUS, OHIO

(December 14, 1948)

Five nonstrikers at the company's plant were injured in a commando-like raid. Police arrested five men, all identified as members of the striking union. It was stated that the attackers carried iron pipes, bricks, angle irons, clubs, and socks filled with stones. The assistant plant superintendent was struck over the head and the windows of his car smashed. Other nonstrikers were ent by flying glass as strikers broke car windows. The attacking group then sped away and eluded a city-wide police dragnet.

## 29. CORBIN, KENTUCKY

(February 10, 1948)

300 men, many of them armed, attacked workers attempting to enter a strip mine and injured 13 of them. They forced the mine superintendent to sign a document which he was told was a union contract.

## 30. UNION: OIL WORKERS, CIO; COMPANY: STANDARD OIL OF CALIFORNIA, CALIFORNIA

(October 13, 1948)

In Richmond two refinery workers were ambushed, beaten, and robbed by club-wielding CIO members. In El Segundo, a refinery worker was seized by four men as he was entering the plant and was "taken for a walk" and beaten. Drivers of two gasoline trucks also reported that their windshields were smashed by rocks. As three men approached the plant gate, they found their way barred by a steel girder thrown across the road as a barricade. When they got out of their car to remove the barricade, a group of 15 to 20 men, swinging baseball bats, appeared from behind a nearby railroad embankment and attacked them.

## 31. UNION: CIO; COMPANY: AEROQUIP CORPORATION, MICHIGAN

(August 27, 1948)

Peter F. Hurst, president of the corporation, testified at a congressional committee hearing that he fled in 1939 from Germany to escape the same kind of mob street violence that he saw at his strike-bound factory when 2,000 CIO members slugged and manhandled executives and office workers trying to enter the plant. The hearing at which two witnesses showed scars from the conflict was guarded by six state policemen sent by orders of the Governor to keep peace at the session.

## 32. UNION: OIL WORKERS, CIO; COMPANY: SHELL OIL COMPANY, MARTINEZ CALIFORNIA

(October 1, 1948)

Striking CIO oil workers fought and turned back several groups of nonstrikers trying to go to work at the company's refinery, but gave way to three carloads of workers escorted by police. Numerous other attacks upon workers and overturning of automobiles in isolated encounters with strikers followed mass violence at the plant, where pickets stoned and overturned automobiles containing men and women office workers.

## 33. UNION: AFL; COMPANY: INTERNATIONAL HARVESTER COMPANY, EAST MOLINE, ILLINOIS

(October 18, 1948)

Five persons, including two AFL officials, were arrested amid picket-line violence, which included the smashing of auto windows, the hurling of a stench bomb, and an attempt to bar workers from the plant by force. The strikers carried placards attached to wooden clubs, and these were used to smash auto windshields and windows and to batter the tops, hoods, and fenders of workers' cars as they entered the plant premises.

PERSONNEL AND LABOR RELATIONS COMMITTEE, ILLINOIS STATE CHAMBER OF COMMERCE, 20 NORTH WACKER DRIVE, CHICAGO 6; ILLINOIS BUILDING, SPRINGFIELD

Chairman: John Slezak, President, the Turner Brass Works, Sycamore.

Secretary: Loren K. Hutchinson, Manager, Personnel and Labor Relations Department, Illinois State Chamber of Commerce, Chicago.

R. F. Ahrens, Vice President, Personnel, United Air Lines, Chicago.

Marion J. Allen, Assistant Vice President, American Steel Foundries, Chicago.

Paul D. Benbow, Personnel Manager, Barber-Greene Company, Aurora.

Garret L. Bergen, Divisional Vice President, Marshall Field and Company, Chicago.

- J. Fred Berry, Personnel Manager, Alton Box Board Company, Alton.  
 H. L. Bills, Director of Industrial Relations, Acme Steel Company, Chicago.  
 Henry H. Bolz, General Manager, Association of Commerce of Decatur, Decatur.  
 William G. Caples, Manager, Industrial Relations, Inland Steel Company, Chicago.  
 Robert M. Capps, President, J. Capps and Sons, Limited, Jacksonville.  
 U. Gordon Colson, President, U. O. Colson Company, Paris.  
 Lawrence A. Combs, Director, Industrial Relations, Container Corporation of America, Chicago.  
 W. G. Conner, Jr., Works Manager, Walworth Company, Kewanee.  
 Alice G. Connolly, Personnel Director, Swarthchild and Company, Chicago.  
 P. C. DeBruyne, Vice President, Moline Malleable Iron Company, St. Charles.  
 Donald E. Dickason, Director, Non-Academic Personnel, University of Illinois, Urbana.  
 Carl A. Dietz, Assistant to Vice President, Ingalls-Shepard Division, Wyman-Gordon Company, Harvey.  
 W. G. Dorsett, Director, Industrial Relations, Sangamo Electric Company, Springfield.  
 Bruce Dwinell, General Attorney, the Chicago, Rock Island and Pacific Railway Company, Chicago.  
 Franz Eakin, Vice President, A. E. Staley Manufacturing Company, Decatur.  
 Malcolm W. Eaton, Treasurer, Micro-Switch Corporation, Freeport.  
 George P. Edwards, President, Woodruff and Edwards, Incorporated, Elgin.  
 Owen Fairweather, Seyfarth, Shaw and Fairweather, Chicago.  
 Robert Forslev, Director, Industrial Relations, the Quaker Oats Company, Chicago.  
 Leslie H. Geddes, Vice President, Greenlee Brothers and Company, Rockford.  
 Florence H. Greenleaf, Personnel Director, Esquire, Incorporated, Chicago.  
 C. Edwin Hair, Hair Locker and Cold Storage Company, Benton.  
 Paul Heerens, Personnel Manager, Abbott Laboratories, North Chicago.  
 James W. Karraker, Second Vice President, the Northern Trust Company, Chicago.  
 W. W. Kimmell, Industrial Relations Manager, R. G. LeTourneau, Incorporated, Peoria.  
 A. Pope Lancaster, Industrial and Public Relations Manager, Western Electric Company, Chicago.  
 T. J. Lopatka, Personnel Manager, Diamond T Motor Car Company, Chicago.  
 C. L. MacKinnon, the Franklin Association of Chicago, Chicago.  
 Griffith Mark, Clayton Mark and Company, Evanston.  
 Robert D. Morgan, Morgan, Pendarvis and Morgan, Peoria.  
 Harry J. Neumiller, President, Humitube Manufacturing Company, Peoria.  
 Harold F. North, Industrial Relations Manager, Swift and Company, Chicago.  
 K. G. O'Leary, Factory Manager, the Ingersoll Milling Machine Company, Rockford.  
 Howard Peck, Director, Industrial Relations, Allis-Chalmers Manufacturing Company, Springfield.  
 Mason Phelps, Jr., Pheoll Manufacturing Company, Chicago.  
 Bryant H. Prentice, Jr., General Personnel Manager, Kraft Foods Company, Chicago.  
 Mark L. Putnam, Manager, Department of Industrial Relations and Personnel, Deere and Company, Moline.  
 Edward B. Rust, Director of Branch Offices, State Farm Mutual Automobile Insurance Company, Bloomington.  
 Nadia Sabador, Director, Salary and Wage Administration, Whiting Corporation, Harvey.  
 John P. Santucci, Director, Personnel and Industrial Relations, Nationwide Food Service, Incorporated, Chicago.  
 Burnham P. Spann, Personnel Director, Gardner-Denver Company, Quincy.  
 John C. Staehle, Director, Industrial Relations, Alden's Incorporated, Chicago.  
 Fred J. Walters, Vice President, Industrial Relations, Hotpoint, Incorporated, Chicago.  
 Charles Wham, Wham and Wham, Centralia.  
 W. T. Williams, Director, Industrial Relations, Kuehne Manufacturing Company, Mattoon.  
 Ivan L. Willis, Vice President, International Harvester Company, Chicago.  
 C. R. Young, Director of Personnel, Illinois Central Railroad, Chicago.



Mr. CHRISTENSEN. The issue presented by S. 249 is clear: If you believe that an employer and a union should be free to deduct dues from a man's pay without his consent;

If you believe the law should not provide that men are free not to engage in union activities;

If you believe that Communists should be allowed, without disclosure, to occupy positions of control in unions in interstate commerce;

If you believe unions should not be required to report on finances;

If you believe a union should be allowed to blockade highways and engage in violence;

If you believe an employer should be required to bargain in good faith but a union should not;

If you believe a union should not be held responsible for performance of contracts voluntarily entered into;

If you believe employers should be free to force men to join a union in order to get a job;

If you believe employers are not entitled to effective freedom of speech;

If you believe a foreman can serve two masters—the company and the union;

If you believe independent unions are not entitled to the same treatment by the Labor Board as affiliated unions;

If you believe the Board should be prosecutor, judge, and jury;

If you believe complaints should be issued on stale charges and rules of evidence should not prevail;

If you believe the Board should be permitted to decide cases against the preponderance of evidence;

If you believe courts should not have power, where justified, to stop flagrant breaches of law and prevent irreparable harm;

If you believe employer and employee should not have equality under the law;

If you believe the States should be without power to regulate their own labor affairs, even though the Supreme Court says they may;

Then you should vote for S. 249.

Unless you believe in those things, and are willing to tell your constituents that those are your beliefs, you cannot vote for S. 249, because by destroying the guaranties of Taft-Hartley it would implement all of them, and more, too. That is the clear issue, and is the issue the public ultimately will see and understand.

Slave labor: Some people thought it clever to label the Taft-Hartley Act "Slave-labor law," although the labelers never have been able to point out what section or paragraph enslaved anyone. Ironically, the draftsmen of S. 249 have created a genuine slave-labor bill, and I can point out the section. Section 302 (c) of S. 249, in my opinion, would violate the constitutional prohibition against involuntary servitude.

Section 208 of the Taft-Hartley Act, authorizing national emergency injunctions, does not order anyone to work, and permits only the enjoining of "such strike or lock-out, or the continuing thereof." Section 302 (c) of S. 249, on the other hand, makes it a flat requirement of law that "the parties \* \* \* shall continue or resume work." There is all the difference in the world, constitutionally and legally, between calling off a strike and actually ordering that men must work. This bill unconditionally says "shall \* \* \* work."

You cannot have a stronger command—the Attorney General has referred to it as a “mandate”—in his letter of February 2, 1949, to Senator Thomas—the Attorney General has referred to it as a “mandate.”

“Shall continue or resume work” is new language. It was not in the Wagner Act, is not in Taft-Hartley, nor the Railway Labor Act. Even the stringent War Labor Disputes Act, the unconstitutionality of which, as requiring involuntary servitude, was urged by some unions. See, for example, the *France Packing Co. case* (67 Fed Supp. 841, 166 F. 2d 751). Four Federal judges passed on the case on the pleadings and wrote four opinions as to whether the requirement of section 8 of the War Labor Disputes Act, that the war—

contractor and his employees \* \* \* continue production under all the conditions which prevailed—

at the beginning of the cooling-off period was constitutional. The prevailing view seemed to be that it could be sustained on the theory that individual employees did not have to work but if they chose to continue in their jobs, they had to do so on the prevailing conditions—did not go so far. Courts always recognized that while they could enjoin the calling or conducting of strikes, they never could order men to work nor prevent them from quitting their jobs—for example, see *Preble v. Architectural Iron Workers* (260 Ill. App. 435) :

The decree \* \* \* enjoined only the calling of strikes. This in no way involved the right of the members of the defendant union from quitting their employment if they saw fit to do so.

The Secretary of Labor was uncomfortably vague as to how this provision would be enforced. The Attorney General says that “should the parties not obey the mandate of section 302 (c)” to work, the Government would have “access to its own courts.” There is real slave labor.

One of two things is true, either the Secretary of Labor is correct in his general view that section 302 (c) is an unenforceable platitude, in which event the public, which wants what legitimate protection it can have against national emergencies, would be short-changed; or, the Attorney General is correct that the “statutory obligation”—this is the term used in the Attorney General’s letter of February 2, 1949, to Senator Thomas—to work would be enforced by the courts, in which event labor would be short-changed. Certainly these gentlemen have proved that you cannot draw a good law in this delicate field hastily.

Separation of functions: Taft-Hartley’s internal rearrangement of the Board was presaged by the revelations of the Smith committee and sentiment at the time of the Case bill. It has been wholesome and has brought greater efficiency. Not only should the judges not be prosecutors, but time lag in Board decisions always has been and still is a problem. That problem should not be intensified by again burdening the quasi-judicial officers with administrative detail.

Labor monopolies and economic power: The present policy of the United States as declared in section 2 of the Norris LaGuardia Act is that although the individual worker should have full freedom of association, he also “should be free to decline to associate with his fellows.” As that true liberal, Justice Brandeis, said:

The closed shop seems to me opposed to our ideas of liberty, as presenting a monopoly of labor which might become as objectionable a monopoly as that of capital (The Brandeis Guide to the Modern World, pp. 139, 140).

John L. Lewis, who has a greater monopoly in coal today than John D. Rockefeller ever had in oil, has given a sample of how objectionable these monopolies may be.

A union that by the union shop or the closed shop controls all the jobs in a plant has a monopoly in a double sense: With respect to the man seeking to get or to hold a job it has a job monopoly to which he must bow; to the public it has monopoly which controls the flow of goods. Both are evil.

By removing virtually all restraints on unions this bill would encourage them to spread out horizontally at wage earner level. By removing the ban on foreman unionization it would encourage the same unions to move up vertically into successive steps of management. By approving compulsory unionism and by its attempted destruction of contrary State laws it would make it lawful to force all these people, rank, file and supervision, into the unions and subject them to their domination.

This bill would not merely restore the Wagner Act—in total effect it would give unions greater power and leverage than ever before. That is what the unions are aiming at. General Counsel Goldberg of the CIO is reported as testifying before this committee that “the moral right to be nonunion does not exist.” In the Supreme Court in the closed shop cases (*Lincoln Union v. Northwestern I. & M. Co.*, January 3, 1949), the A. F. of L. asserted that compulsory unionism was “indispensable,” because “the worker becomes a member of an economic society,” in which the unions assert a constitutional right to command obedience. Mr. Justice Black, delivering the Court’s opinion, rejected these arguments as “startling ideas.” They are no more tenable here than they were in the Court.

This committee is rightly and deeply concerned with how to cope with national emergencies. But these emergencies arise only because unions have been permitted to acquire economic control of entire industries. This bill, by encouraging compulsory or monopoly unionism, would intensify the problem.

Congress should not retrograde from the policy of the Norris-La-Guardia Act. It should hold fast to it and put unionism on a wholly voluntary basis.

Transfer of Conciliation Service: Based upon the experience of my firm, permit me to underscore Conciliation Director Ching’s testimony that businessmen would not have confidence in the impartiality of the Conciliation Service if it became an arm of the Labor Department. Certainly, no man intelligent enough to run a business is naive enough to believe that the Labor Department which drew this bill is impartial.

Pattern for a labor government: But let no one think that title II provides merely for a transfer of a Government bureau. The far-seeing authors have slipped into title II new and vast delegations of power and declarations which, coupled with the rest of the bill, would pave the way for union domination of the country, with the public, the farmer, and industry left to survive as best as they could.

These features are the skeleton in the closet. It is no wonder the CIO wants this bill jammed through before the public can learn its implications and see how the jigsaw puzzle fits together.

Here is the pattern: Destroy freedom to stay out of unions; authorize compulsory unionism; destroy State’s rights; invade and paralyze



management by unionization of foremen; put Conciliation in a partisan department and endow it with authority to act whenever it wishes and to use whatever "methods \* \* \* it deems appropriate \* \* \* to improve relations" (sec. 202 (d)); regulate the content of collective-bargaining agreements (sec. 204); declare a public policy that contracts must provide for binding arbitration (sec. 205) and then put Conciliation in the arbitration business (sec. 202 (b), (c), 205).

Conclusion: We are presented with an anomalous situation. Taft-Hartley was enacted after detailed hearings in response to widespread demands that a one-sided law be made two-sided, and that a badly functioning administrative agency be straightened out. The unions claimed the law would kill them. But Bureau of Labor statistics quoted by the joint congressional committee demonstrate that under Taft-Hartley strikes have gone down and wages and union memberships have gone up; no one has been forced into involuntary servitude. Still the union leaders want the law repealed. They want their old power as union leaders.

Taft-Hartley was not passed to kill unions. On the contrary, it recognizes they are socially desirable, and are here to stay. It attempts only to curb abuses and excessive power. It should be amended only in accordance with the report of the joint congressional committee.

Senator DONNELL. Mr. Christensen, might I ask you what, if any, experience have you had with the provision of the Taft-Hartley law permitting the employers to sue unions for breach of contract? What is your observation on that provision?

Mr. CHRISTENSEN. Our experience has been this: We have neither been requested to nor had occasion to file a suit of that kind. In our practice with the clients we look after I have seen it work remarkably well.

For example, about 6 weeks ago at a foundry employing about 500 men in Chicago, a one-shift operation, they have to draw the iron off before they can close down at the end of the day, get it out of the cupola, and they customarily got through a little before the stated quitting time and the men were paid a full 8 hours, although they finished their work 15 minutes ahead of time.

One day because the cupola didn't work right, they didn't get through ahead of time and had to work the full 8 hours. They demanded overtime. They obviously weren't entitled to the overtime, and one committeeman said, "Yes, we are. Either they get it or they are quitting the following day." With the aid of the chief shop committeeman he pulled out almost the entire plant.

My client simply went to the union and said, "What goes on here? Your union is wrong. If we have violated the contract—which we haven't—you have got a grievance procedure. Get those people back to work."

The union sent out a telegram that day saying, "You are in violation of the contract, you are endangering your union, your own employment rights, you are perhaps subjecting us to liability for suit, report for work."

They got them back, simply because they didn't want to be sued. Without this provision, they wouldn't have had the power or authority to have done that. We have seen constantly cases of these "quickies"

where it works that way. It is in our opinion, and as we have seen it work in our practice, it has made genuine responsibility. People used to talk about being responsible, but you had wildcat strikes all over the place. Today they not only talk about being responsible, but they necessarily are responsible, and labor contracts have come to mean something, and you don't have to file lawsuits about it.

Senator DONNELL. You are very modest about your firm. It has a great many clients, does it not? How large an office does your firm have?

Mr. CHRISTENSEN. We pay more rent than we would like to there. I guess we have about 45 lawyers.

Senator DONNELL. Mr. Strawn in his lifetime was the head of it?

Mr. CHRISTENSEN. He was the beloved head of our firm for many years.

Senator DONNELL. And head of the American Bar Association at one time?

Mr. CHRISTENSEN. Yes, sir.

Senator DONNELL. He was head of it, and he was also head of either Montgomery Ward or Sears, Roebuck, was he not?

Mr. CHRISTENSEN. For a time he was chairman of the board of Montgomery Ward, during an interim period.

Senator DONNELL. You have many large clients engaged in business and manufacturing industries?

Mr. CHRISTENSEN. We have a diversified practice. The practice of no Chicago law firm represents as large interests as the eastern firms. We represent a great many small businesses, people who employ from 200 to 1,000 people.

Senator DONNELL. So you represent both large and small clients?

Mr. CHRISTENSEN. Yes.

Senator DONNELL. Do you think the same reasons, if any did exist in the twenties, in support of the closed shop, exist in support of it today?

Mr. CHRISTENSEN. Oh, no, Senator, obviously not. You see, in the twenties prior to the passage of the Norris-LaGuardia Act and the Wagner Act, you could have "yellow dog" contracts, you could fire people for engaging in union activities; even if you had a union that represented a majority of the people, the employer didn't have to deal with it as the collective agent.

All of those things, of course, could be used to thwart, or in the case of an employer who wished to attempt to destroy unions.

Unions, therefore, sought the union shop as a means of solidifying their phalanxes, and resisting these things. Now today no employer can do those things, they are all illegal under the Wagner Act or under the Taft-Hartley law, either one, and the Norris-LaGuardia Act. The employer simply can't take those classic steps that the people cite as the classic ways in which you can disrupt or break a union. They are all illegal and, so far as I see, everyone wants to keep them illegal.

Unions no longer need the union shop to protect themselves against that, and what they get, of course, out of the union shop is simply a monopoly and a tremendous economic power.

Senator DONNELL. You mean the closed shop?

Mr. CHRISTENSEN. Or the union shop, either one, any form of compulsory unionism.

Senator DONNELL. Are you willing to do one thing for this committee? Senator Douglas mentioned yesterday the Colonial Hardware case and Smith Cabinet case. As I understand, they were mentioned as establishing under the Taft-Hartley Act that every member of the union is an agent of the union.

If you know anything about those cases, would you mind filing a memorandum giving your views as to the effect of those cases?

Mr. CHRISTENSEN. Oh, yes; I can do that.

Senator DONNELL. Do you know those cases?

Mr. CHRISTENSEN. I am familiar with them and have looked at them since last night. I was here yesterday and heard the Senator's comment.

Senator DOUGLAS. If I may correct the record, I said that pickets had been held to be agents of the union.

Mr. CHRISTENSEN. What it boils down to is, if you read the decisions, they held pickets as agents of the union only for actions done either in immediate proximity to and under the guidance of officers of the union or that were carried on by pickets over such a continuous course of time under the observation and with the tacit consent of the union officers as to amount to, under any rule of law of agency, as saying the union authorized or ratified those acts.

They just applied ordinary common-law rules of agency the same as applied to any type of thing. I don't think they established any new principle of agency.

Senator DONNELL. I assume it is unnecessary for you to file the memorandum since you have given that analysis.

Mr. CHRISTENSEN. Very well, if that is satisfactory. Now that I am on the stand I am at your disposal. I will do whatever the committee desires.

Senator DONNELL. I will withdraw the request to file the memorandum, since you have made that statement.

The CHAIRMAN. Are there any questions? Is that all, Senator Donnell?

Senator DONNELL. Yes, sir.

The CHAIRMAN. Senator Murray.

Senator MURRAY. I might ask you this: Is this your statement, prepared by you personally, or did other members of the firm you are in assist in its preparation?

Mr. CHRISTENSEN. It was drafted by me, Senator, and submitted to some of my partners and associates for suggestions and criticisms, some of which I accepted and some of which I did not. It is my product for which I take full responsibility.

Senator MURRAY. After consulting with them, you accepted their recommendations and incorporated their recommendations into the statement and adopted them as your statement?

Mr. CHRISTENSEN. That is correct.

Senator DONNELL. In part he did and some he rejected; is that right?

Mr. CHRISTENSEN. Yes; just the usual job of drafting any document. I don't think any of us—

Senator MURRAY. Does your firm approve of this statement? Is it their idea of what the law is and their attitude toward this particular law that you are testifying about, the bill S. 249?



Mr. CHRISTENSEN. Senator, I can only answer that this way: I am a partner in the law firm. It must take responsibility for what I say and do. I, therefore, assume that it has to take responsibility for this.

It is, however, my product and I have not consulted all of my partners about it because not all of them are versed in labor law.

Senator MURRAY. Your firm is a well-known firm, you say?

Mr. CHRISTENSEN. I hope so.

Senator MURRAY. Did your firm oppose the Wagner Labor Relations Act when it was first enacted back in 1935?

Mr. CHRISTENSEN. I don't think we took any part.

Senator MURRAY. Didn't they express the view that it was unconstitutional? Didn't they recommend to their clients that they didn't have to follow it because it was invalid?

Mr. CHRISTENSEN. That is correct. Given the same circumstances, Senator, in going back to the same period, I believe any conscientious lawyer would have given the same advice.

You must realize that up until the Jones & Laughlin decision, holding this law constitutional, the unbroken decided authority, the precedent, was that manufacturing was a part of intrastate commerce and was not subject to regulation by the Federal Government, and the opinions which were circulated at that time by supposedly reputable and well-grounded lawyers were that this law exceeds the commerce power and will be declared unconstitutional. I don't want to elaborate, the time is short, but that was at the time, you recall, of the Supreme Court fight and there were many factors that entered into the Jones & Laughlin decision, which reversed a complete line of legal precedent up to that time.

I have no doubt that we gave such an opinion, and I am not ashamed of it. I think, given the same circumstances over again, any lawyer would give the same opinion.

Senator MURRAY. That had a serious effect in putting the law into operation in the first instance because industry accepted that opinion and refused to abide by the law and attempted to ignore it; is that right?

Mr. CHRISTENSEN. That only lasted for some 16 or 17 months. The Jones & Laughlin decision came out in April 1937, the Wagner Act was sometime in the summer of 1935, less than a 2-year period before it was upheld as constitutional.

Senator MURRAY. Your firm was wrong on that occasion, but you think now in this occasion you are right in all the respects in which you criticize S. 249?

Mr. CHRISTENSEN. I don't think our firm was wrong on either occasion.

Senator MURRAY. You think the Supreme Court was wrong in holding it constitutional?

Mr. CHRISTENSEN. No, I don't say that; but no lawyer can predict. All a lawyer can do is tell you what precedents and decision up to a given time establish. When the Supreme Court makes up its mind to make a new turn, I think we should be forgiven that.

On the precedent that existed at the time we gave that opinion, we were correct. I likewise think this statement is correct.

Senator MURRAY. Many people think that is one of the difficulties in these problems connected with labor relations, that the lawyers con-

fuse the situation frequently and have a bad effect in trying to establish relations in this country that will be peaceful and productive.

Mr. CHRISTENSEN. I have heard that criticism, sir.

Senator MURRAY. It has been said that this Taft-Hartley Act was a full employment act for lawyers.

Mr. CHRISTENSEN. That is not so.

Senator MURRAY. It certainly has created a lot of employment for lawyers on the part of labor, hasn't it?

Mr. CHRISTENSEN. No; I don't think it has.

Senator MURRAY. I have heard some lawyers claim they make pretty good money.

Mr. CHRISTENSEN. It transferred the bill for the payment of the costs from the public purse in the form of NLRB to the labor unions. They now are paying their own legal bills where NLRB used to furnish free legal staff.

Senator DONNELL. Was that under the Wagner Act?

Mr. CHRISTENSEN. Yes.

Senator MURRAY. You wouldn't concede there is a possibility that you may be mistaken in all of the conclusions that you have arrived at in this statement here on this occasion?

Mr. CHRISTENSEN. Senator, I will concede not only there is a possibility that I am wrong on one of them, there is a possibility that I am wrong on all of them. I don't think that is probable. I believe I am correct, but I am not infallible, I don't think any of you gentlemen claim to be.

Senator MURRAY. I don't wish to continue this cross-examination, but I hope that our failure to cross-examine this witness will not be taken as a concession that he is correct in all these matters and that the testimony of other witnesses here will stand as a refutation of his argument.

The CHAIRMAN. May I ask a question in regard to Mr. Strawn?

Mr. CHRISTENSEN. May I say this, sir? If you wish to cross-examine me, although I would like to go home, I am willing to get off and let this other witness testify, and I place myself at your disposal. I don't want to run out.

Senator MURRAY. You come up tomorrow morning and we will keep you on the stand all day tomorrow if you wish.

Mr. CHRISTENSEN. I am not asking for it, sir.

The CHAIRMAN. I merely want to get this straight. Mr. Strawn is the same Mr. Strawn whom President Coolidge sent to China; is that right?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. He was president of the American Bar Association in 1928, was he not?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. I am awfully glad you came and brought us back to our senses, as far as our committee and our thoughts and the thoughts of witnesses are concerned. A great constitutional case over the National Labor Relations Act turned on the commerce clause, did it not?

Mr. CHRISTENSEN. That is right.

The CHAIRMAN. And all of these things that have been mentioned by various witnesses, they were not brought before us in the hearings when the National Labor Relations Act was before us, about its lop-

sidedness and its lack of freedom of speech and all those things, they were rationalizations that came as a result of administration, were they not?

Mr. CHRISTENSEN. I am not qualified to answer that.

The CHAIRMAN. Do you think any witness came before us and said, "This act is bad because it is one-sided and doesn't allow freedom of speech on both sides?"

Mr. CHRISTENSEN. I am not qualified to answer that. I haven't read the debates in full. I don't know.

The CHAIRMAN. I am pretty sure it was the commerce clause and that that was the stand which the 69 attorneys took, and I think that is where they should stay, because they were then in the line of what up until that time was good law. The dictum was handed down that mining, manufacturing, and agriculture were of purely local concern and, therefore, they weren't part of the interstate commerce scheme, and the great contribution to the enlargement of our constitutional law in regard to labor law—of course, the facts of industry and the facts of life got way out ahead of that dictum, but the great contribution which the National Labor Relations Act made to our country was to bring the law of the land up to the facts of the land in our industrial lives. It was shown, for instance, in other hearings in which I took part that there was hardly anything in connection with one great economic enterprise which we had that was of local concern at all, or "intrastate," the word the lawyers use.

We had some 13 or 14 witnesses in front of us at one time representing one of the greatest concerns, and I thought it would be a good idea to just ask questions of each one about how his business was run, what it was run for, and after they got through we discovered that that great business just simply didn't have any local interest at all, that the things they manufactured, raw products came from some other place, the building was built by architects from some other place, the buildings were actually built by laboring men brought from another State, the organization was set up by people from other States, and we went to the whole trouble of getting a complete recital, making a complete recital of exactly how industry in the United States worked.

We knew what we were doing when we did it, because after once you got that record into the official records of the American Congress, it would be very, very hard for any Supreme Court to come out and say, "This law is unconstitutional because it patently interferes with what our notion was of interstate commerce, because we have always rested our decisions upon a fiction that agriculture, mining, and manufacturing were purely of local concern."

And there in your evolution of the constitutional history of the United States you have a very good story.

Mr. CHRISTENSEN. It took an entirely new turn in constitutional theory as to the scope of the Federal Government.

The CHAIRMAN. The only way in which I ever argue these laws is in that way. I am not interested in rationalizations and in excuses that come along and in various cases that happen. But the way this country has grown up has been by the development of its constitutional processes. Excuse me for keeping you that one minute, but to see Mr. Strawn's name brings up a lot of things in my young life that are very, very happy memories.

I happen to have been with him at one or two places.



Senator DONNELL. Would the Senator have objection to having Mr. Strawn's name appear in full? Is that Silas Strawn?

Mr. CHRISTENSEN. Yes.

Senator DONNELL. In what capacity was he sent to China by President Coolidge? Perhaps the chairman can answer that.

The CHAIRMAN. He was sent over to make a report on whether it was time for us to renounce the extraterritoriality of China, and he came back with a negative report. It happened to be my very, very happy duty and very, very happy task to bring about our renunciation of extraterritoriality in China, so I was a little bit interested back there in 1928 when we accomplished it.

There was a commission sent over to study, which brought back a negative report, a very interesting report in the light of history and in the light of circumstances, but a very fine legal statement.

Senator DONNELL. Thank you, Mr. Christensen for coming.

The CHAIRMAN. Thank you very much.

(Subsequently Mr. Christensen addressed the chairman by letter as follows:)

WINSTON, STRAWN, SHAW & BLACK,  
Chicago, February 21, 1949.

HON. ELBERT D. THOMAS,  
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: May I trespass on your time to convey two thoughts?

First. Permit me to express my personal appreciation of the courteous way you treated me as a witness before you Saturday afternoon, even though I appeared in opposition to the bill you have introduced.

Second. I regret that limitations of time forbade my commenting on two propositions which were advanced that day by Professor Feinsinger, because those propositions are inimical not only to stable industrial relations but are alien to our concept of government:

1. The proposition that the President be granted undefined empirical powers and machinery to deal with national emergencies on a basis of believed temporary expediency—in substance the professor said that he didn't want the parties to know what the President would do in event intervention became necessary. That unabashed prayer for a government of men and not of law was, to me, profoundly shocking.

Certainty of procedure, of remedies, and of rights is the essence of good government and good industrial relations. An imperfect, but known and understood law, from point of view of either public, labor or management, would be preferable to the blind man's buff and gambling game the professor would impose.

2. The proposition that Congress should create a commission such as the English commission to design a new labor law—that proposition can have validity only on one or both of the premises that Congress is not capable of understanding the problem and writing a good law, or that political bodies are not the places for hammering out laws in controversial fields. I deny both the premises and prefer to trust my fate to our elected and responsible legislators rather than to selected, professed experts. And I suggest that the unfortunate English example the professor cited proves my point—what American workingman today would trade his position for that of an Englishman? Tested by actual results, our Congress has done better both for the businessman and the laborer than the English commission did for its people.

In view of the fact that the professor, by being unaware, until reminded by Senator Taft, of the well known and basic fact that a special proviso was necessary in Section 8 (3) of the Wagner Act to legalize the closed shop, demonstrated that, whatever he may know of semantics, his knowledge of our labor laws is neither accurate nor profound. I assume that the committee necessarily will liberally discount his views.

In courtesy to Senator Donnell, who examined me, and my own Senator, Senator Douglas, I am sending each of them a copy of this communication.

Respectfully yours,

C. B. CHRISTENSEN.

The CHAIRMAN. Mr. Jeffrey, will you come forward, please.

**STATEMENT OF HARRY P. JEFFREY, ON BEHALF OF THE FOREMEN'S LEAGUE FOR EDUCATION AND ASSOCIATION**

Senator MURRAY. Give your name and the organization you represent, and your address.

Mr. JEFFREY. Mr. Chairman and gentlemen of the committee, my name is Harry P. Jeffrey. I am a lawyer practicing in the city of Dayton, Ohio, and am secretary and general counsel of the Foremen's League for Education and Association. The Foremen's League is a nonprofit corporation organized for the purpose of furthering educational work among foremen and supervisors. Its office is in Dayton, Ohio, and its work is financed by more than 250 industrial concerns, both large and small, located throughout the country.

The league advocates retention of the sections relating to foremen and supervisors contained in the Labor-Management Relations Act of 1947. We believe this a realistic and commonsense approach to a problem that vitally concerns both labor and management. Both the original Wagner Act and its amendment by the Taft-Hartley Act recognize labor as an entity and management as an entity. There has to be a practical dividing line. In this sense, where does labor and management begin? We believe that both history and common sense reveal that management begins with the foreman.

Throughout the life of American Industry, the foreman has been a part of management and the direct representative of management at its initial point of contact with the rank and file or production worker. This has been the traditional position of the foreman. It is his position today. He is the first link in the management chain and this is true whether he is employed in a small or a great mass production enterprise.

In the Packard Motor Car Co. case, Mr. Justice Douglas, in his dissenting opinion, states:

It (Wagner Act) put in the employer category all those who acted for management not only in formulating but also in executing its labor policies. Foremost among the latter were foremen. Trade-union history shows that foremen were the arms and legs of management in executing labor policies

The foremen's league believes that foremen themselves are the best witnesses as to their own status.

Today there are two national foremen's organizations in the country with a membership of approximately 75,000 and literally scores of scattered clubs made up of foremen, not identified with any national group, which operate on this principle. While we are aware that currently opinion polls are not in the best standing, I believe we all realize that intelligently conducted research can be both informative and helpful. In 1948, the highly respected Opinion Research Corp. of Princeton, N. J., conducted the latest of a series of national polls among foremen and found that only 13 percent of those contacted either belonged to or were interested in joining a union. In other words, 87 percent of all supervisors were not interested in organizing for collective-bargaining purposes but preferred for their own selfish interests to remain a part of management and to deal individually with higher levels of management.

Prior to passage of the Wagner Act, efforts to organize foremen as such for collective-bargaining purposes were unknown. Indeed, this condition prevailed for a period of almost 7 years after the passage of that act. Not until late in 1941 was a case brought before the National Labor Relations Board which claimed that foremen were employees within the meaning of the act.

The industrial unrest incident to production for war during the period 1941 to 1945 gave rise to efforts to organize foremen. There were many contributing factors including restrictions on wage and salary increases and the need for vastly increasing the number of foremen without opportunity for proper selection or training.

This effort was largely concentrated in and around the Detroit area and was carried on principally by an organization which had no official connection with any of the greater international unions. The largest number of foremen claimed to have been organized during this period was about 100,000 and probably never exceeded 75,000. It is estimated at the present time that the number of foremen organized for collective-bargaining purposes and operating under collective-bargaining contracts is less than 5,000.

The National Labor Relations Board first held that foremen were employees within the meaning of the Wagner Act, later reversed this decision, and at a still later time again did an about-face and ruled that foremen were employees within the meaning of the act. This construction of the law was affirmed by the United States Supreme Court in the Packard Motor Car Co. case by a 5 to 4 decision.

We are sure that it is the desire and intention of this committee and this Congress to enact labor legislation to promote harmonious and a mutually profitable relationship between management and labor. To this end, let us review the history of labor relations as to foremen and supervisors when organized and unorganized.

Prior to 1941, strikes or work stoppages due to foremen's unions were unknown. From 1941 to 1945, such strikes were a fertile source of industrial unrest and were harshly criticized by Gen. H. H. Arnold in his testimony before the House Military Affairs Committee relating to production of matériel for war. Since the effective date of the Labor-Management Relations Act relating to supervisors, there is only one strike or work stoppage of record arising out of a foremen's union.

Our plea is for the Congress to recognize foremen for what they are—a basic part of management. American industry cannot prosper, the American foreman cannot retain his status, privileges, and opportunities under a divided system of loyalty in its lower ranks of management. The foreman cannot receive and execute policy from higher levels of management and simultaneously be subject to direction from union officers or any other source than management. Again, as stated by Mr. Justice Douglas:

If foremen are "employees" within the meaning of the National Labor Relations Act, so are vice presidents, managers, assistant managers, superintendents, assistant superintendents, and indeed all who are on the pay roll of the company, including the president.

In the interest of peaceful industrial relations and in the enactment of the forthcoming Thomas Act which will have such great influence on the prosperity of the country, we respectfully urge that this fundamental distinction between the worker and management be recognized.



Mr. Chairman, I have filed a more elaborate statement which I respectfully ask be incorporated in the record.

Senator MURRAY. It will be incorporated in the record.

(Mr. Jeffrey submitted a prepared statement as follows:)

#### FOREMEN AND SUPERVISORY EMPLOYEES IN AMERICAN INDUSTRY

(By Harry P. Jeffrey, Secretary and General Counsel of Foremen's League for Education and Association, Dayton, Ohio)

##### I. NUMBER

It has been variously estimated that there are between 3,000,000 and 4,000,000 men and women employed as foremen and in other supervisory capacities throughout American industry. It is likely that considerably less than 3,000,000 fall within the definition of a "supervisor" as defined by section 2 (11) of the Labor Management Relations Act, 1947.

##### II. RELATIONSHIP OF FOREMEN TO MANAGEMENT

Throughout the life of American industry, the foremen has been a part of management and the direct representative of management at its initial point of contact with the rank and file or production worker. This has been the traditional position of the foreman. He is the first link in the management chain and this is true whether he is employed in a small or a great mass-production enterprise.

The opinion of the National Labor Relations Board in the Maryland Dry Dock case (49 N. L. R. B. 733), contains the following:

"We are now persuaded that the benefits which supervisory employees might achieve through being certified as collective bargaining units, would be outweighed not only by the dangers inherent in the commingling of management and employees functions, but also in its possible restrictive effect upon the organizational freedom of rank and file employees."

Again, in the case of *Packard Motor Car Company v. National Labor Relations Board* (330 U. S. 485), Justice Douglas, in his dissenting opinion, at page 496, states:

"It (Wagner Act) put in the employer category all those who acted for management not only in formulating but also in executing its labor policies. Foremost among the latter were foremen. Trade-union history shows that foremen were the arms and legs of management in executing labor policies. In industrial conflicts, they were allied with management. Management indeed commonly acted through them in the unfair labor practices which the act condemns. When we upheld the imposition of the sanctions of the act against management, we frequently relied on the acts of foremen through whom management expressed its hostility to trade-unionism."

##### III. FOREMEN'S ASSOCIATIONS AS UNITS OF MANAGEMENT

For many years, foremen have associated themselves together for self-help through education and association while opposing the principle of collective bargaining.

The National Association of Foremen was originally organized in 1922 and today has approximately 40,000 members in either industry-wide or city-wide clubs scattered over 34 States. The constitution of this organization specifically forbids its members as such or its affiliated clubs to engage in collective bargaining for its membership.

The National Council of Industrial Management Clubs, affiliated with YMCA's of the United States, likewise has been in existence for many years and has approximately 35,000 members scattered throughout the industrial cities of the country. These clubs likewise do not and cannot engage in collective bargaining on behalf of their membership.

In addition to these two national organizations, there are literally scores of scattered clubs made up of foremen and men and women from the lower ranks of supervision which are not affiliated with either of the large national organizations.

The principle upon which all of these organizations proceed is that their membership is a part of management and that the best interests of their membership are served by management affiliation rather than through collective bargaining with higher levels of management.

In 1944 a national poll was conducted among foremen by Dr. Claude Robinson, of Opinion Research Corp., Princeton, N. J. This poll revealed that only 13 percent of the foremen contacted, either belonged to a union or were interested in joining a union.

#### IV. HISTORY OF EFFORT TO ORGANIZE FOREMEN FOR COLLECTIVE BARGAINING PURPOSES

Prior to the enactment of the National Labor Relations Act (Wagner Act), efforts to organize foremen as such for collective-bargaining purposes were unknown. Indeed, this condition prevailed for a period of almost 7 years after the passage of this act. The National Labor Relations Board functioned under the act from 1935 until late in 1941 before any case was brought before it, claiming that foremen were employees within the meaning of the act and as such were entitled to the protection and benefits which it conferred.

The industrial unrest incident to production for war during the period from 1941 to 1945 did give rise to efforts to organize foremen for collective-bargaining purposes. There were many contributing factors, among which were restrictions on wage and salary increases and the need for vastly increasing the number of foremen without opportunity for proper selection or training. This effort was concentrated largely in and around the Detroit area and was carried on principally by an organization which had no official connection with any of the great international unions. The largest number of foremen claimed to have been organized for collective-bargaining purposes during this period was about 100,000 and probably never exceeded 75,000. At the present time, it is estimated that the number of foremen organized for collective-bargaining purposes and operating under collective-bargaining contracts is less than 5,000.

#### V. LEGAL HISTORY OF FOREMEN'S UNIONS

The National Labor Relations Board was first called upon to decide whether foremen were employees under the terms of the Wagner Act, as previously stated, after the act had been in existence for about 7 years. By a split decision, the Board first held that foremen were employees within the meaning of the act and later reversed this decision. In subsequent cases, the Board completed another about-face and finally ruled that foremen and supervisors, regardless of the amount of authority which they exercised, were employees within the meaning of the act. The United States Supreme Court, by a 5 to 4 decision, in the case of *Packard Motor Car Company v. National Labor Relations Board* (330 U. S. 485) affirmed this decision.

After the passage of the Taft-Hartley Act, the constitutionality of the section of the act relating to supervisory employees and excluding them from the coverage under the National Labor Relations Act (Wagner Act) was tested in the case of *National Labor Relations Board v. Edward G. Budd Manufacturing Company*. The United States circuit court of appeals upheld the constitutionality of the act in August 1948 in case No. 10,259 on the docket of this court in the sixth circuit, and in case No. 415, styled *Foremen's Association of America v. Edward G. Budd Manufacturing Company*, the Supreme Court of the United States refused to review this decision on January 10, 1949.

It has been finally determined, therefore, that the provisions of the Taft-Hartley Act relating to foremen and supervisory employees are constitutional.

#### VI. PROVISIONS OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947 RELATING TO FOREMEN

The Labor-Management Relations Act, 1947, popularly known as the Taft-Hartley Act, so far as its sections are pertinent to this discussion, became effective August 22, 1947.

Section 2 (3) defines the word "employee" and provides that the term "shall not include \* \* \* any individual employed as a supervisor." Section 2 (11) defines the term "supervisor" in the following language:

"The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them,

or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Section 14 of the act provides as follows:

"Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

It is to be noted that the act does not forbid the unionization of foremen for collective-bargaining purposes. This is carefully spelled out in section 14 quoted above. What the act does do is to distinguish supervisors as therein defined as a part of management in contrast to production workers and to provide that supervisors shall not be entitled to the benefits and privileges of the act.

This legislative action is a recognition by the Congress of the important basic principles set forth by Justice Douglas in his dissenting opinion in the Packard case, *supra*, and the performance of the invitation for legislative action on this question as suggested in the majority opinion of Justice Roberts in the same case.

#### VII. EXPERIENCE OF FOREMEN UNDER THE NATIONAL LABOR RELATIONS ACT AND THE LABOR-MANAGEMENT RELATIONS ACT, 1947

The attempt to organize foremen for collective-bargaining purposes was the source of much industrial strife during the important war-production years of 1942 to 1945. The testimony of Gen. H. H. Arnold before the Military Affairs Committee of the House in 1944 contained a severe indictment of this organizational effort as it affected our production of materials for war. Since the enactment of the Labor-Management Relations Act, 1947, and over a period of almost 18 months, there is only one strike of record involving a foremen's union.

The first report of the Joint Committee on Labor Management Relations of the Congress of the United States was issued on March 15, 1948, some 7 months after the act had been in effect. The following appears on pages 29 and 30 of that report:

"The committee has observed a growing trend of employer attempts to make their foremen a part of management. In many of the plants visited, we found new programs designed to give more responsibilities to the lower ranks of supervision and to acquaint them not only with the policies of management but the reasons therefor. Not only has the exclusion of supervisory employees from the benefits of the act failed to produce the work stoppages predicted by opponents of the provision, but it has served to promote the establishment by employers of plans creating many new benefits for supervisory employees."

#### VIII. CONCLUSION

The provisions of the Labor Management Relations Act, 1947 (Taft-Hartley Act), relating to supervisors, should be retained and made a part of any amendments to the National Labor Relations Act (Wagner Act) for the following reasons:

(1) Foremen (as defined in the act) are a part of management and their own best interests are best served by retaining this relationship rather than attempting to operate through collective bargaining.

(2) Foremen are a part of management and to confer on them rights and standing before the National Labor Relations Board is detrimental to the best interests of production workers, other levels of management, and the consumer public.

Again, as stated by Justice Douglas, "if foremen are 'employees' within the meaning of the National Labor Relations Act, so are vice presidents, managers, assistant managers, superintendents, assistant superintendents, and indeed, all who are on the pay roll of the company, including the president."

The overwhelming majority of supervisory employees in American industry have demonstrated no desire for association into unions for collective-bargaining purposes, but on the contrary have clearly shown their desire to be and remain on the management team. This is true both in normal periods and in abnormal periods resulting from production for war.

True management status for foremen best serves foremen and all other segments of American industry as well as the consuming public.



Senator SMITH. May I ask one or two questions, unless you want to catch your plane. If you do, you may go.

Mr. JEFFREY. Thank you, Senator. I have asked that the reservation be canceled. There is a plane about 9 o'clock, which I will endeavor to get.

Senator SMITH. Does your address appear in the record?

If not, I would like to have your address.

Mr. JEFFREY. My address is 512-20 Harries Building, Dayton 2, Ohio.

Senator SMITH. Do I understand you were formerly a member of Congress?

Mr. JEFFREY. For a very brief period I had the privilege of sitting from the Third Ohio District as a member of the Seventy-eighth Congress, from Dayton, Ohio.

Senator SMITH. I notice in your formal statement that you say in the opening there:

It is likely that considerably less than 3,000,000 fall within the definition of a "supervisor," as defined by section 2 (11) of the Labor-Management Relations Act, 1947.

I am not exactly clear as to what that means. Do you mean there is a large group of foremen that wouldn't be covered by the Taft-Hartley definition?

Mr. JEFFREY. No, Senator; I believe that one of the results of the sections of the Taft-Hartley Act relating to foremen and supervisors has been to cause management to make a greater distinction and a real distinction as between management and the line worker.

I understand that large efforts have been made to separate the man who was formerly called the leadman and straw boss and by other known terms in industry and he definitely now has become a part of the line worker or production worker; whereas, the foreman has been placed in a category which really makes him a part of management.

Of course, those figures, 3 to 4 million, are at best intelligent guesses, and I believe that there are probably less than 3,000,000, both by reason of this more sharply defined effort to separate foremen, that there are perhaps 2 or 3 million that would fall within that category today.

Senator SMITH. What I am interested in is the question whether you and your group agree with the definition of the term "supervisor" as appears in the Taft-Hartley Act, section 2, paragraph 11. I will read that into the record for the purpose of our discussion:

The term "supervisor," means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

That is the definition in the Taft-Hartley Act, and anybody who comes under that definition apparently is not included under the definition of employee as it appears in section 2, paragraph 3 of the act, but it says they are excluded from the employee definition, any employee employed as a supervisor, which is later defined here; is that correct?

Mr. JEFFREY. That is my understanding.

Senator SMITH. To make that entirely clear. In section 14 of the Taft-Hartley Act, we have the following provision:

Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

Mr. JEFFREY. I have quoted those sections in the formal statement filed with the committee.

Senator SMITH. I haven't had time to read that through, but for the purpose of our discussion here, your position is that you do agree with the definition of supervisors contained in the Taft-Hartley—supervisors under that definition should not be included as employees for the purpose of collective bargaining, and you also agree with section 14 of the Taft-Hartley Act, which takes away the collective-bargaining privileges from the supervisors or foremen, to use another expression; is that right?

Mr. JEFFREY. I think, legally speaking, there is a question of whether 14 was even necessary. It doesn't hurt, and I think it is well to have it affirmatively stated that nothing in this act would prevent foremen from organizing if they choose to do so and have the strength to do so.

Senator DOUGLAS. But the employer would always be free to fire them if they do.

Mr. JEFFREY. Yes; they are not legally bound to negotiate with a foremen's union as those foremen are defined in the act.

Senator DOUGLAS. They could discriminate against them because of union membership.

Mr. JEFFREY. Yes; as a part of management, they are taken out from under the umbrella, so to speak, of the Wagner Act.

In answer to your question as to the definition, I suppose there will never be a perfect definition which fits all the many varied types of industry we have in the country, but I think as a whole this definition has served to work very well, and I know that in many industries, let's say in some industries, since the effective date of this act, that is, August 22, 1947, there has been a very definite effort to sharpen the line which I am sure has redounded to the benefit of foremen as such.

Senator SMITH. Do you carry your philosophy of this matter to this point, that you think each individual foreman or supervisor, as defined, should deal separately with his employer as to his wages or status, and so on, or would you say that within a given industry or for instance all the foremen in the Ford Motor Co. should act together and bargain with that company, or couldn't they even do that?

Mr. JEFFREY. No; I think that is a matter of principle. Either foremen are or are not a part of management. If they are a part of management, then I think in the interest of the foreman himself as well as the public and the management and all the rest, he must forego the right of collective bargaining. I understand, of course, there is no compulsion on a man to step up from the rank-and-file production worker, that he does it voluntarily, and when he steps out of the ranks of the production workers and becomes a part of management, I think in the interests of himself and all segments of management and, incidentally, as Justice Douglas points out in his dissenting opinion, in the interest of the rank-and-file production worker, he must give up the rights of collective bargaining.

There is no compulsion. He can return. Perhaps this is not a good analogy, but it is something like getting married. You give up certain rights when you take that step. When a man becomes a foreman, he has certain greater opportunities. He has higher pay levels, he has certain other prerogatives and privileges, and in response to those and for those privileges he gives up the right of collective bargaining, and I think that line must be drawn, not with a shaded line, but sharp and fast, if it is to be an effective disposition of this question.

Senator SMITH. As far as you are concerned, the definition we have here then would cover the type of people that have that status?

Mr. JEFFREY. Yes.

Senator SMITH. The definition is very important. We have had different points of view. Mr. Carl Brown was here.

Mr. JEFFREY. I have had the privilege of meeting Mr. Brown.

Senator SMITH. I gathered from what he testified that he felt it should be that those who are free from unionization among the officers of a corporation would be those that had some part in the making of policy. I think he went too far, but that was his line of demarcation.

Mr. JEFFREY. I think that is very fundamental today, particularly in large industry. I think we have got to recognize there is not only the problem of formulating policy but of executing policy, and the second is no less important than the first.

There are greater numbers with perhaps lesser rewards in carrying out the second half of that, but it is no good to formulate management policies unless they may be executed. I think this is a fair statement. I think it was demonstrated—I was here when Mr. Gossett of the Ford Motor Co. testified, and I think you will recall the illustration that it was necessary to insert an extra layer of management in order to meet the problem of the unionization of those foremen, and what is the result?

It can only result in hardship in the last analysis for the foremen themselves, because if there is another layer of management, it will increase the cost of production and the cost of the commodity to the general public, but it will work a hardship on the foreman because as he loses status and the relationship as a part of management, the rewards of the position are going to go down.

Senator SMITH. Has your problem been complicated by the difference in practices in different corporations with regard to who are considered in this category and who are not?

Prior to the Taft-Hartley definition, was there confusion?

There must have been some confusion, because I remember 2 years ago when we were discussing this provision, we had all sorts of views presented, and we finally arrived at this conclusion.

Some said if a man has a right to hire and fire, that is where to draw the line. I never was satisfied with that. I thought the Taft-Hartley definition was a pretty good over-all picture.

Mr. JEFFREY. I wouldn't be so bold as to suggest that all confusion has disappeared, because I do not believe that to be true, and in different industries even the terms are different, and, for example, a man in one factory, I have learned, who really exercises the power of a superintendent, carries a title which would indicate a much lesser status.



And so it is that titles are different, the functions are different, both in a given industry and within varying plants, but I think that the definition contained in the present act is sufficiently broad.

It could be improved upon, probably, but certainly it has worked with a fair degree of satisfaction, and I think that management has responded in many, many plants. You have in your joint committee report, with which you are no doubt more familiar than I, specific instances of where individual plants have sharpened the distinction. That is, they have taken lead men and taken them completely out of the management field and made them a part of the production line, rank-and-file, worker along with other workers, and, by the way, the organization which I represent—and I would like to go on record as saying this—takes no part in either being for or against unionization of production workers. We feel we have a tremendous job here. This is not an antiunion organization; it deals exclusively with foremen and supervisors and their problems.

So, to come back where I started, they have sharpened the line, and the status of foreman is more clearly sharpened both to his benefit and to the benefit of the management as a whole.

SENATOR SMITH. You indicated in your report that probably not to exceed 13 percent, I think you used that figure, were either in foremen's unions or were desirous of joining foremen's unions.

MR. JEFFREY. That is correct.

SENATOR SMITH. Is that a recent check-up that you referred to or is it something that ought to be brought up to date? I am wondering how much the demand is for foremen to be unionized. I think there must be a line of demarcation between those who have responsibility of executing policy and the workers. You can't have a divided allegiance, as you say, but I am troubled about the definition.

MR. JEFFREY. So far as I know, this is the latest report on an index of public opinion on this foreman question and it came out, I believe, in March of 1948. I know of nothing more current than that.

This poll indicated that 4 percent of the foremen contacted belong to a union and 9 percent indicated that they were interested in joining a union, and 87 percent of the foremen gave the opinion that they were neither members nor were interested in joining a union.

SENATOR SMITH. Do you have any evidence of any complaints by foremen that they have been prejudiced by not being able to bargain collectively? Are there any objections to their present status of independent negotiators for their own status? In other words, is there a movement to make this group which is being prejudiced or dealt with harshly or not having a fair break because they can't bargain collectively—is the objective to get more people into the union?

MR. JEFFREY. I would only attempt to express an opinion based upon my own personal contacts and those I have been able to get through others, and I can answer that in this way? It has been my job to talk with and meet foremen in the Detroit area, not once but many times, in the Pittsburgh area, in Wheeling, W. Va., and other places, and very frequently at the close of a meeting that I have attended and in which I participated I have had the experience of men who were former members, for example, of the Foreman's Association of America, telling me while they had belonged to the Foreman's Association of America during the early 40's period, they felt they were better off

since they were no longer members and since they were definitely stamped as a part of management and had all of the prerogatives which went with that.

That has happened not once but many, many times. I know of no movement that springs spontaneously from foremen for their organization.

I appreciate, of course, the organization which Mr. Brown represents, Mr. Brown who testified so well here the other day, is interested in organizing foremen, as is their privilege, but I know of no vast discontent.

I think the best answer to your question is one which appears in this brief which shows that during the period 1942 to 1945 when foremen were organized under the interpretation which the National Labor Relations Board finally put on the Wagner Act, during that period there was an epidemic of strikes.

General H. H. Arnold of the Army Air Forces appeared before a committee in the House, I believe it was a Subcommittee on Appropriations, and spoke rather harshly of the results of the unionization of foremen, particularly in the Detroit area, as it had caused work stoppage and had interfered with the production of matériel for war, and the record speaks for itself.

The NLRB records are full, of course, of cases involving the unionization of foremen. On the other hand, during the past 18 months, according to the best information I am able to gather, there has only been on strike or work stoppage, and that was in the Detroit area, and that lasted, I believe, 4 days, and there is none other of record. I think the experience answers your question.

Senator SMITH. Most of the foremen come up from the ranks where they have been in union organizations probably; is that right?

Mr. JEFFREY. Yes, sir.

Senator SMITH. That is the experience. They are promoted to a job that pays better and has more responsibilities.

Mr. JEFFREY. Yes, sir.

Senator SMITH. Do you find from your study of this subject when a man leaves his crowd, so to speak, as a member of the union where he has been in the bargaining unit and is taken out of that and put on the management side, do you find there is any prejudice against him or that it is bad psychology, or what is the general effect?

Mr. JEFFREY. No, Senator. I had a foreman down here with me last week and, by the way, I never saw him before he reached Washington, in the hope that he might give us his personal experience, and I think it is interesting.

He is 35 years of age today. He held a card in the CIO steel workers' union for some 10 or 12 years after he got out of school and went into the steel workers' union, and he has been employed for some years with the Robert Shaw Thermostat Control Co. in Youngwood, Pa.

There was a man who held some minor office in the CIO union, who had been a good union member for 12 years. Then he was promoted and made a foreman. He said he has from 45 to 50 men under his direction. He has given up his membership in the rank and file production workers' union and he feels that he is a part of management and he is proud of that and he has no desire to belong to a union, and the fact that he once belonged to a production workers'

union neither hindered him in being promoted nor apparently does he feel any difficulty concerning it now in his management of the men.

Senator SMITH. I am very hopeful that a man working in the union has an opportunity to rise, as is the American way, and I don't want this foreman issue to raise any barrier.

Mr. JEFFREY. I have no figures and this is merely one man's opinion, but I feel it is reasonably certain that the vast majority of men who become foremen have come right straight up out of the ranks of industry. I think experience will demonstrate that, and I have met with a good many groups of foremen, and that has been the common experience.

Senator SMITH. I won't examine the witness further because there are others and probably the distinguished Senator from Illinois wants to question the witness. I know he is interested in this question.

Senator DOUGLAS. No.

The CHAIRMAN. Senator Donnell?

Senator DONNELL. No.

The CHAIRMAN. Thank you very much.

We will have inserted in the record a letter from Mr. Ching, the Director of the Federal Mediation and Conciliation Service, which letter is in response to a question asked by Senator Humphrey.

(The letter referred to above is as follows:)

FEDERAL MEDIATION AND CONCILIATION SERVICE,  
Washington 25, D. C., February 18, 1949.

HON. ELBERT D. THOMAS,

*Chairman, Committee on Labor and Public Welfare,  
United States Senate, Washington, D. C.*

MY DEAR SENATOR THOMAS: On February 16, toward the close of the testimony given by Mr. Walter Munro of the National Brotherhood of Trainmen, Senator Humphrey requested to be informed of the appropriations that had been made available to the former United States Conciliation Service in the Department of Labor and to the present Federal Mediation and Conciliation Service. He also appeared to desire information concerning the number of individuals employed by the two Services (see transcript, p. 3551).

I am attaching to this letter a table taken from our first annual report, setting forth a comparative statement of personnel of the two Services for the fiscal year 1943-50, and a statement of funds appropriated directly to the Service in those years which is based upon the budget records of the former Service. However, in my opinion the gross figures of appropriations and personnel do not fairly set forth the difference in the operating cost of the two Services. For one reason, the appropriations to the former Service shown in the above-mentioned statement do not include funds appropriated to the Department of Labor for that Service. A more realistic and truer comparison of the operating costs of the two Services was contained in a memorandum dated February 3, which I submitted to you on February 4, for inclusion in the record in compliance with the requests of several members of your committee made on the occasion of my appearance before it. For your convenience, copies of that memorandum entitled "Would Transfer to the Department of Labor Result in Economies?" are attached to this letter.

You will observe from a reading of that memorandum that there has been an increase of about \$615 per employee per year over the average salary cost of the former Service. This amount is attributable to the general \$330 congressional increase and to a revised salary schedule for mediators which was designed to attract and to hold the highest and most desirable type of personnel and to give recognition to unusual performance and ability. Despite this considerable increase the net increase in the over-all expenses of the Service (including salaries) will be only \$390 per person per year in the fiscal year 1949 and less than \$340 per year in 1950 as compared to the cost in the fiscal year 1947. In other words, the unusual savings in costs other than salaries effected by the new Service has offset almost half of the increase in the salary cost. If



these savings had not been effected, the increase in over-all costs might easily have amounted to \$1,000 or more per person per year. These facts are substantiated by the material and tables in the memorandum which I assume are already in the record.

I am also taking the liberty of assuming that Senator Humphrey will desire to place the information in this letter and attachment in the record, and, accordingly, I am submitting to you an appropriate number of copies for that purpose.

Sincerely yours,

CYRUS S. CHING,

*Director, Federal Mediation and Conciliation Service.*

[Attachment]

COMPARISON OF SIZE OF STAFF AND APPROPRIATIONS OF UNITED STATES CONCILIATION SERVICE (DEPARTMENT OF LABOR) AND FEDERAL MEDIATION AND CONCILIATION SERVICE (INDEPENDENT AGENCY)<sup>1</sup>

The first Annual Report of the Director of the Federal Mediation and Conciliation Service for the fiscal year ended June 30, 1948, contains the following statement (p. 6) in regard to staff and funds of the former United States Conciliation Service and the present Federal Mediation and Conciliation Service:

"The changes in the size of the staff of the United States Conciliation Service, during this period of rapid development of its organization and functions were as follows by fiscal years:

1943-----	343	1946-----	488
1944-----	421	1947-----	449
1945-----	416	1948-----	442

"The budget estimates projected for the years 1949 and 1950 are for a staff of 388. The budget approved by Congress for the 10 months of the fiscal year 1948, during which the Service was in existence, was \$2,170,000. The budget approved by Congress for the Federal Mediation and Conciliation Service for the full fiscal year 1949 was \$2,940,000."

The net appropriations for previous years are as follows:

1943-----	\$1,789,306	1946-----	\$2,491,042
1944-----	2,168,454	1947-----	2,582,000
1945-----	2,182,044		

The CHAIRMAN. It might be well for the record to show how we stand for time. The Republicans have 478 minutes remaining, the Democrats 623.

We will recess until Monday morning at 9:30.

(Whereupon, at 5:30 p. m., the committee recessed, to reconvene at 9:30 a. m., Monday, February 21, 1949.)

<sup>1</sup> The independent agency was established as of August 22, 1947.



## LABOR RELATIONS

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MONDAY, FEBRUARY 21, 1949

UNITED STATES SENATE,  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D. C.*

The committee met, pursuant to adjournment, at 9:30 a. m., in the committee room of the Committee on Labor and Public Welfare, United States Capitol, Hon Elbert D. Thomas (chairman) presiding.

Present: Senators Thomas (chairman), Murray, Pepper, Hill, Neely, Douglas, Humphrey, Withers, Aiken, Smith of New Jersey, Morse, and Donnell.

The CHAIRMAN. The committee will come to order.

Mr. Sanders, for the record will you state your name, whom you represent, and then proceed.

You understand the rules under which we are working: Ten minutes allowed for a statement, and then questions by the various Senators.

### STATEMENT OF J. T. SANDERS, LEGISLATIVE COUNSEL, THE NATIONAL GRANGE

Mr. SANDERS. Mr. Chairman, my name is J. T. Sanders. I am legislative counsel of the National Grange, and I appear here on behalf of the National Grange.

The National Grange is grateful for the opportunity your Committee on Labor and Public Welfare has given us to appear before you and give our views on the repeal of the Taft-Hartley Act. We are deeply interested for only with reasonably full employment and production can there be prosperity for any of us.

The problem of equitable industry-labor relations as well as the problem of encouragement of strong democratic labor organizations is of great interest to us. We are heartily in favor of them.

Likewise we are strongly in favor of equitable fair rules to guide industry in its efforts to work out peaceable and sound relations with organized labor. Unless modern agriculture can operate under a condition of stable full employment and output in industry no sound solution of the farm problem can be worked out. We, therefore, have a profound direct and continuous interest in your efforts to enact sound labor-management laws.

It is our conviction that both labor and management, in dealing with their mutual disputes, need to remember and emphasize more than they do that each must recognize a paramount responsibility to the general public, since their right to freely bargain is granted and guaranteed to them by a democratic society—a right that must not be abused if that society is to continue.



Most of their difficulties and clashes on the provisions that should be included in labor laws such as the Wagner, Taft-Hartley, and the Norris-LaGuardia Act, spring from their overemphasis on their own partisan views and a minimization of the public interests. This attitude tends to destroy the very climate of freedom of bargaining which both labor and management desire.

We wish to emphasize that neither labor nor management can come before this Congress and rightfully claim rights which exclude or subordinate public interests. We believe many of their claims have been of that stripe.

Labor laws, the National Grange believes, therefore, should set up rules that would guarantee to both labor and management fair, equal, and noncoercive rights, free from monopolistic advantage, but always limited by the paramount interest and welfare of the public. These are the basic principles and policies that have determined the labor-management views of the National Grange presented in this statement.

The National Grange, at its November session took the following action relative to the subject now before your committee:

We believe the enactment of the Taft-Hartley Act has had a corrective effect on labor and management disputes. We favor such modifications in the act as may be necessary to correct abuses or weaknesses that are shown to exist.

May we emphasize something at this juncture which is a type of a declaration that we seldom feel called on to make. However, it appears to make it at the beginning of our statement. Support of the Taft-Hartley Act by the Grange does not have one iota of political implication in it. We regret that the accusation of politics, seemingly from both sides, has appeared in connection with the hearings on this subject which is so vital to our national welfare.

It has been claimed that the recent election constitutes a mandate to repeal the Taft-Hartley Act. In all humility, may we say that it is our conviction that farmers played fully as decisive a role in the determination of the surprising results of the recent election as did any other cohesive group; and we are convinced that it is an error to claim that the election was a mandate for outright repeal of the Taft-Hartley Act.

We would like to state also that we care nothing whatever about the name of this act; that we are only interested in preserving in law its many provisions that are vital to fuller employment and output and to a stabilized industrial peace and prosperity.

The National Grange, at its last annual session, detailed our labor-management policies in 10 further specific statements, other than our stand on the Taft-Hartley Act, as follows:

(1) We believe free enterprise and democracy depend upon an economy of reasonably full production, and freedom from monopolistic practices for labor, industry, and agriculture alike; and that there is a sound social, moral, and economic basis for these views.

(2) That management of industry should place a policy of high output and reasonably full employment above high prices and profits; and should be prohibited from using coercion and intimidation in its relationship with labor.

(3) That labor unions have a useful place in the Nation in order that the combined economic strength of industrial and professional workers may offset the power of organized or big industry and finance.

(4) That organized labor has most to gain by adopting as its primary objective the maintenance of reasonably full employment and an economy of full production, a principle which applies equally to all economic groups and can be made a basis for cooperation between all groups.

(5) That we uphold the right of labor to strike and to organize on an industry-wide basis, especially in industries dominated by a few large units.

(6) That when a strike, or threatened strike, becomes a serious menace to public health, safety, and the general welfare, the use of the injunction and compulsory arbitration is justified.

(7) That the Grange does not condone such restrictive practices as the secondary boycott, sympathetic and jurisdictional strikes, slow-downs, any unjustified reduction of the workweek, and featherbedding by labor.

(8) That mass picketing which results in intimidations is unfair, but that all workers of a struck plant should be protected in their right to picket peaceably.

(9) That a majority of the workers in a plant must vote favorably by secret ballot before giving union-shop privileges to any labor organization; and that we oppose the closed shop.

(10) That we recommend to organized labor, the adoption of a parity wage automatically adjusted semiannually to the cost of living. By this we do not mean to preclude labor from bargaining collectively through representatives of its own choosing to improve its working and living standards or obtain an increased share of the national income.

These labor-management policy pronouncements of our organization, the oldest general farm organization of this country, are given at the outset because we wish to assert and show in unmistakable terms, that we are not only not opposed to, but are very much in favor of, democratically organized labor; and that we are earnestly desirous that organized and unorganized labor obtain maximum equitable advantages for themselves, so long as these are gained by democratic processes and are not a detriment to the general welfare.

We list these pronouncements of the Grange at the outset also, lest our support of the Taft-Hartley Act be misunderstood as unjustified and hasty opposition to labor, or lack of cooperation with it, in view of the bitter opposition of labor leaders to this law.

It has always been our purpose to support democratic and sound union labor and to aid in lifting its lot and the lot of unorganized labor. That is, we think, both enlightened self-interest on our part, as well as interest for the general welfare.

At the foundation of our labor policy are the three Grange guide posts that guide us in nearly all of our economic, social, and political policies. These guide posts will bear repeating over and over again in all our deliberations including those on labor-management problems, for they are also applicable as guides to your task. These three guide posts are as follows:

1. All prosperity springs from the production of wealth; or anything which retards the production of wealth is unsound.

2. The compensation of each should be based on what he contributes to the general welfare.

3. The primary purpose of government is to protect its citizens from aggression—both physical and economic.

We believe these guide posts are just as fundamental, sound, and as equitable, for guidance in labor and management policies as they are for agriculture. We know that free labor, independent management, and a prosperous free agriculture working together in such a manner that no one of them can obtain unfair or undue advantage over the other or the public, are basic requirements for the perpetuation of our free-enterprise system.

The strength of this free-enterprise system arises out of the fact that each individual is left free, within the limits set by a free society, to exercise his own choice as to employment, religion, and philosophy

of life. Left thus to his own choosing we believe he becomes a thinking, energized, inventive individual, which results in the greatest possible effectiveness in economic life. Our national policy in regard to labor and management must, therefore, be based on the preservation and the strengthening of our free-enterprise system.

Our views on labor-management problems also should be interpreted in the light of a definite understanding of the true economic nature of the average farm unit. This average farm unit is a business concern of relatively small size when compared with the size of other business units.

The labor required by this farm unit consists largely of a farmer and his family who furnish about three-fourths of all labor needed, the operator being both manager and laborer in the concern.

By nature, this labor is a fixed cost which cannot be reduced by the operator when his output is reduced. He either uses this labor supply or it goes to waste and he loses its value. Furthermore, the more mechanized agriculture is, all over the country, the larger is the percentage of farm labor supplied by the farmer and his family, which is the best index of the family farm; and, therefore, the strength and stability of the family-unit type of farm is not only not weakened but is made stronger and more enduring with the increased mechanization of farms. A relatively large proportion of other costs than labor on the farm are also fixed costs so that at least two-thirds to three-fourths of all the costs of operating the average American farm are fixed costs that cannot be reduced when the volume of output on the farm is reduced. This being the case, it does not pay the farmer to turn himself out of a job in order to reduce his volume of production when prices are falling, since he loses more by reducing than by maintaining his output. Consequently, the farm unit is characterized by full production, full output, and full employment at all times, during depressions and during prosperity alike. This obviously also holds true for agriculture as a whole.

But this is not true of nonagricultural industry in general. Industry operates with a large percentage of variable costs, about 75 percent of these being costs that can be reduced easily when the volume of output of the industry is reduced. Two-thirds of these variable costs are hired-labor costs. Therefore, the average industrial concern, when a depression hits, loses less money by reducing its volume of output and turning labor onto relief rolls or out on the streets, than it would if it undertook to maintain full volume of output and full employment.

In contrast, the farmer loses less if he maintains full employment on his farm and full volume of output, and is thereby inevitably an abundant producer. He operates a concern that seldom, if ever, reverses its production gears. They are nearly always set forward and in high gear regardless of depression or prosperity. The Grange believes that all labor laws should seek to correct as much as possible this basic defect in our present labor-management economy—the defect of an unbalance of industrial output with the full output of our farms. Certainly it is bad statesmanship and unsound economics to pass labor laws that encourage restriction of output and thus accentuates the defect.

The CHAIRMAN. Mr. Sanders, you have gone over 10 minutes. The whole statement will be put into the record.



Senator AIKEN. How long would it take, another 10 minutes?

Mr. SANDERS. Yes.

Senator AIKEN. How about taking it out of the cross-examination time?

The CHAIRMAN. That is agreeable with me.

Senator AIKEN. Because there will be very little cross-examination anyway. This is evidently a very carefully thought-out statement.

Senator NEELY. Mr. Chairman, if the Republicans want to take it out of their time, they can do it.

Senator AIKEN. That is right. As I understand it, we were allowed 25 minutes for cross-examination, and so I would say that we be permitted to take 10 minutes out of the 25, and that would leave us 15 minutes, and your side, Senator Neely, would take whatever time you have or whatever time you want.

The CHAIRMAN. All right.

Mr. SANDERS. To understand the farmers' attitude on labor-management disputes, it is necessary to appreciate this fundamental difference between the nature of the farm unit and the industrial unit as producing concerns. The farm unit being inherently and almost inevitably a full-production unit regardless of depressed prices or good prices, its operators approach labor-management disputes thinking in terms of the same pattern of abundant production under all conditions, and are impatient with labor and management for advocating policies and programs that go counter to a full output. Farmers have a wholesome and hearty dislike for such policies or practices.

Since abundant production in agriculture is almost inevitable the farmer can not see why it should not be the first and foremost requirement of both labor and management in their dealing with each other. A lack of appreciation on the part of the farmer of the nature of industrial production, as indicated above, and conversely, the lack of appreciation on the part of labor and management of the true nature of agricultural production is at the root of most of the misunderstanding between agriculture, on the one hand, and industry and labor on the other.

This attitude is basic to our support of the provisions embodied in both the unrepealed portions of the Wagner Act and most of the provisions in the Taft-Hartley Act. We believe the unrepealed parts of the Wagner Act and many of the provisions of the Taft-Hartley Act, in conjunction, operate as vital curbs to restrictive and unfair practices and thus encourage the maintenance of peaceful productive relations and fair settlements of differences between management and labor. We believe that these provisions, if clarified and strengthened, will, in the future, be powerful forces for peaceful stabilization, at high levels of industrial employment and output; and we urge your committee to proceed with great caution in repealing these vital provisions.

These provisions also are of great importance to farmers in helping to maintain stability of income in farming. They will tend to stabilize full output in industry and to match the full stable physical output that inevitably flows from our farms during both good times and bad times. We believe that this balanced stable production is not only a prerequisite to stability of farm income but of the stability and permanence of our democracy also. Sound labor-management



laws are as necessary a part of the whole structure as sound agricultural laws.

Our detailed suggestions of needed retention or changes in labor laws are based largely on the labor-management philosophy of the Grange previously presented. In offering the following suggestions we believe that we have not given too much weight to this viewpoint of the great need of placing greater importance on stability of employment. It is our judgment that no labor-management laws are sound if they fail to promote maximum stability of employment, honest full measure of service on the part of the laborer, the payment of wages only for labor performed, fair wage rates, and decent safe conditions of labor. These can be promoted only in an atmosphere of good will, under democratic control, and with an absence of coercion and chicanery by both parties to the conflict. Finally, no laws are sound that do not place the necessities of the general welfare above the wishes of either labor or management.

In substantiation of our contention that greater emphasis must be placed on public welfare and full steady output, we would like to point out that we believe that this is the surest and sanest route for labor to attain a status of equitable and higher wages. High wages arise, we believe, out of relative scarcity of labor for jobs, and not when there is a surplus of labor seeking employment nor by curtailing output in our effort to make work. This is indicated by the fact that history reveals that membership of labor unions has been decimated by depression and greatly increased when jobs were relatively sure.

On the other hand during every recession or depression since 1800, except two minor ones, the purchasing power of the average wage paid to laborers has increased. In the days of depression labor's main fight should be for a job at a parity age, not for the retention of wage rate and consequent loss of jobs. Only the laborer out of work suffers from depression; but unions are frequently well nigh destroyed by them.

We believe that most of the provisions of the Wagner and the Taft-Hartley Acts tend to stabilize employment and constructive bargaining between disputants and thus promotes stability of labor and output. We repeat that only in the atmosphere of security of a job can equitable wage rates best be promoted. With this basic Grange policy as the central background, we would like to point out the main provision of the Taft-Hartley Act which we urge your committee to retain in the law of the land.

The National Grange believes there must be a reasonable guaranty to full production wherever such is possible without removing or restricting the rights of labor to insure for itself the protective rights granted by section 7 of the Taft-Hartley Act.

The right of the individual not to engage in a strike should be conditioned or limited by legitimate union requirements. Coercion by an employer of an individual to limit this right is, we believe, contrary to the individual's rights and also to the right of the public to the benefits flowing from maximum production.

We believe that the five provisions of section 8 on unfair practices of employers, namely, (1) coercion or restraint by employers on labor in the exercise of its rights, (2) preventing interference of employer with the administration of labor unions, (3) forbidding union discrimination by employers in employing laborers, (4) preventing discrimination or discharge of a laborer for testimony given or charges

filed relative to the law, and finally (5) for refusal of employer to bargain collectively in good faith with a recognized union are all sound and should be retained in labor laws, for they tend to stabilize good relations between management and labor.

The union-shop provisions of the Taft-Hartley Act are vastly preferable to the closed shop. The right to a union shop is a special grant of aid to unions against unfair competition. The key advantage of the union shop to labor is limitation of numbers and pressure on workers to join and give their financial support to unions. If this advantage is given unions the individual worker must be protected in his right to obtain work in a union shop; and the public must be protected at least to that extent against restriction of membership and output. The Grange cannot support the privilege for labor of either the closed or the union shop if the Taft-Hartley provisions on the union shops are to be dropped.

We are strongly in favor of retention of the provisions, permitting an employer to select his workers regardless of union membership or nonunion status if they join the representative union within a reasonable time after employment and if they qualify to reasonable tests of union loyalty and obedience to democratically determined rules. We believe that no laborer should be expelled from the union and denied opportunity to work in a union shop except for failure to pay dues and abide by equitable, democratically determined rules of the union.

We are in favor of banning, by law, the highly monopolistic, exclusive, closed shop, since we believe it is neither to the interest of labor in general nor of the general public.

The closed shop is contrary to our belief in an abundant economy, to democratic unions, and to our opposition to all monopolistic agencies.

We are especially opposed to the charging of excessive initiation fees or dues to restrict union membership and thus restrict output. We know of instances where these practices are so used that they are nothing less than exploitation largely for the benefit of unscrupulous labor leaders. We would support stronger provisions on this matter than are included in the Taft-Hartley Act.

We believe that it should be declared unfair labor practice for either employers or employees to use coercion or threats in any of their collective bargaining or in dealings with individual laborers; that both labor and management should be allowed freedom of expression so long as their views, arguments, and opinions do not carry promises of bribes or threats of reprisals; that it should also be an unfair labor practice for either labor or management to fail to bargain with the other in good faith; and that this bargaining should be on a basis of mutual recognition of equality of rights. We favor and urge the retention of these provisions in our labor-management laws.

We favor a legal ban on all secondary boycotts, strikes to force an employer to recognize a union not certified as a bargaining agent, strikes over interunion or jurisdictional disputes, and all make-work provisions in contract or feather-bedding practices. These are wholly and at all times contrary to our philosophy of abundant production, and are, we think, indefensible by labor on any ground except on those of selfish gains to the damage of public welfare and to democracy. We urge the retention of these provisions in our labor laws.

In connection with jurisdictional strikes it appears sound to provide for settlement by mediation or arbitration. We believe the secondary-boycott ban should extend to all goods, union-made and non-union-made, since not to apply it to all goods, extends the force of its operation into other plants and fields outside those of the union directly involved.

If the non-Communist affidavit is to be required of union leaders, we believe that it is only fair that it be required in like manner of management. We can see no valid reason why unions should not be required by law to give a reasonably full accounting to their members and to the Government of their collections and expenditures.

Expenditures for political purposes from regular income of unions should be prohibited by law, since such policies are certain to compel some members to support candidates to whom they are opposed. Welfare funds should be adequately guarded from misuse; and should be jointly administered by management and labor if they are jointly contributed or are determined on the basis of the product turned out, as in the case of coal mining. We see no valid objection to collection of dues by wage deduction with the annual consent of the individual laborer.

We are in favor of the general principles of the determination of the representative union as provided in the Taft-Hartley Act. Some plan to prevent employers abusing unions by calling for such elections where rival unions are contending for representative status should be worked out.

Although we uphold labor's right to strike as a means of gaining equity, we believe that ultimate resort to a strike should be only by an affirmative majority vote and by secret ballot. Although strikes should be resorted to only after all free-bargaining means have failed, we do not believe strikes should legally be the last resort for settlement of disputes.

We are in favor of labor laws that provide an independent public conciliation and mediation body similar to that provided in the Taft-Hartley Act. This agency should be so constituted that the general public, labor, and employers can have unquestioned faith in its judicial integrity and in its freedom from bias for or leaning to either labor or management.

There is just as little logic and soundness for claiming that this agency should be attached to and under the dominance of the Department of Commerce as to the claim that it should be under the supervision of the Department of Labor. We believe it would be a grave error to place the Conciliation and Mediation Agency under either body. We suggest that there might also be added to this agency a national labor-management arbitration court or tribunal available with an adequate staff at any time for call and voluntary use by disputants. No reasonable machinery should be wanting to stave off a strike or to end one that already exists as a means to obtaining a fair bargain in labor disputes.

We favor positive means of preventing strikes in industries where public health, safety, and welfare are in danger. The provisions of the Taft-Hartley Act for an 80-day cooling-off period and the use of the injunction if necessary to implement it is, we believe, justified and should not be repealed. We cannot subscribe to the logic that acknowledges a possibility that need for emergency and extraordinary



powers are likely to arise without concluding that such powers should be clearly incorporated in the law of the land. Public health, safety, and welfare, we believe, should be protected beyond a shadow of a doubt.

Both labor and management should be held equally responsible for fulfillment of their contract and subject to liability of damage for violation. This is the only way wage contracts can be made equally binding; and is necessary to develop sound, satisfactory contracts that encourage maximum continuity of employment. We are heartily in favor of the provision in the Taft-Hartley Act requiring 60 days notice, from both labor and management, of desire to change or terminate a labor-management contract.

We believe that it is not a wise and sound policy to unionize foreman and supervisory personnel with the worker force. Foremen carry out orders of management, and in many instances lay out plans for management, and therefore must represent management. To divide their responsibility between management and employees or to align them definitely on the side of employees deprives management of its rightful functions.

May we say in closing that we believe the outright repeal of the Taft-Hartley Act on the assumption that its many desirable features would later be enacted into law by amending the Wagner Act is very objectionable. This might never be done and the Nation cannot afford to take this risk. We do not mean by this that we believe experts cannot find improved wording, refinement, and simplifications that may improve many of these essential provisions of the Taft-Hartley Act. This we are in favor of doing.

Senator AIKEN. Mr. Chairman, there are not quite 10 minutes left now. We will use that in cross-examination on the Republican side of the committee, and I would like to make sure that we get in this record, Mr. Sanders, something about what the Grange is, whom it represents, where its membership is located, and I think that is more important than to have the rest of this read, and this will all go into the record as if you read it anyway.

I wonder if you could use the last remaining 5 minutes in telling us what the membership of the Grange is, who is eligible for membership in the Grange, how many States have granges, and where the predominance of the membership lies. I think that is important.

You have presented a very comprehensive and apparently carefully thought-out statement as to why the Grange takes the position it does.

Now, can you tell us something about the Grange itself, because the record of these hearings will go to a large number of readers who are not members of the Grange, and who do not know what it is.

Mr. SANDERS. The Grange has organizations, State organizations, in 37 of the States.

It has a membership of somewhere between 800,000 and 900,000 members. It is a family organization. All members of the family above 16 years of age, women, men, can belong. All members of the Grange can hold any office in the National Grange.

It was organized in 1867, and is the oldest national farm organization.

Senator AIKEN. Can you tell us where the greater part of the membership is located?



Mr. SANDERS. The Grange has strong functioning organizations in all States north of South Carolina to the south; it reaches as far down as Texas, and it has organizations in all States, except North Dakota, to the north of it.

It is exceptionally strong in New England, in the Middle North Central States, Illinois, Ohio, and Indiana, and is very strong on the Pacific coast, up and down the Pacific coast.

Senator AIKEN. Have you any questions, Senator Smith?

Senator SMITH. No.

Senator AIKEN. There are 5 minutes left, Mr. Chairman, and perhaps we will waive the right to use the time now and may come back to it later.

The CHAIRMAN. May I ask one question in connection with Senator Aiken's question? What stand did the Grange take, or what relation did it have in the nineties to the Farmers Alliance?

Mr. SANDERS. Well, now, you have asked me a question I do not know the history of specifically. I do know, in general, that the Grange was about where it is now in its policies: that is, it took a very strong policy for the Interstate Commerce Commission and the R. F. D. later on, and is responsible for—I mean it has led out nearly all of the major laws that have been put on the statute books, that are especially beneficial to agriculture, and antimonopolistic.

It stood for the income tax long before we had the income tax, and was fighting for it in the nineties.

The CHAIRMAN. Fighting for the tax law when the Supreme Court cut it down?

Mr. SANDERS. Yes. We fought for it all the time. There cannot be any question about that.

The CHAIRMAN. It stood pretty strongly against the decision of the Supreme Court; did it not?

Mr. SANDERS. Well, we stood pretty strongly for it because of the way the law was written. It later became one that the Supreme Court would support.

Senator AIKEN. Is it not a fact, Mr. Sanders, that the Grange was a very strong factor in securing the establishment of rural free delivery, and was called anarchistic or some such name at the time for advocating the R. F. D., and, later on, the parcel post?

Mr. SANDERS. We have been accused of being both radical and conservative, Senator Aiken, in all of our history. We were considered extremely radical when we permitted women to vote and hold office, all the offices in the Grange, in 1867. We are proud of it.

The CHAIRMAN. Were you ever called names, like all the other liberal agencies in our country?

Mr. SANDERS. Well, I believe that we have been called good names more than we have been called bad names.

The CHAIRMAN. That is, good names by yourself and bad names by other people?

Mr. SANDERS. No, we do not very frequently call ourselves good names. We call ourselves the Grange, and we believe it is a good name.

Senator AIKEN. I recall the name calling at the time of advocating the rural free delivery. That was about as early as I could recall it.

Incidentally, Mr. Chairman, I joined the Grange in 1906, but you did not have to be 16 years old then. [Laughter.]

The CHAIRMAN. Senator Murray.

Senator MURRAY. Your organization has no unfriendly attitude toward organized labor; has it?

Mr. SANDERS. Not at all. We do not think so. We have been accused by organized labor sometimes of having that attitude but we certainly do not feel that way about it.

Senator MURRAY. You recognize the right of labor to organize and to bargain collectively through representatives of their own choosing, with a view to improving their working conditions and improving their wages, increasing their wages?

Mr. SANDERS. Most certainly we do.

Senator MURRAY. And you recognize that without the organization of workers they would not be in the position to buy the products of the farms of the country to the degree that they have as a result of organization?

Mr. SANDERS. Yes. We agree with that, but I believe that is overemphasized. I believe that is overemphasized, and full employment is underemphasized by organized labor to their own detriment.

Senator MURRAY. How do you mean—that they are opposed to full employment? You mean that they have done anything that would prevent full employment in the United States? Do you not think that their attitude has been the contrary, has been to the contrary effect, that as a result of organized labor in this country we have brought about a condition of affairs where we have a higher degree of employment than we had before there was any organization of labor?

Mr. SANDERS. Yes; that is true, but that does not change my statement that I think they still overemphasize high wages and retention of wage levels when the depression hits us, and they underemphasize full employment.

I still believe that that is the case, and I do believe, of course, as you do believe, that organized labor has brought about a greater stability of employment than we would have had without it, and I also believe that the Taft-Hartley Act has affected us that way, also—the provisions of the Taft-Hartley Act.

Senator MURRAY. It seems to me that there is a consensus of opinion even among people in agriculture, in agricultural areas, that the organization of workers in this country has helped to benefit and improve our economic system tremendously.

Mr. SANDERS. I agree with you, Senator.

Senator MURRAY. But you seem to be of the opinion that they sometimes accentuate the proposition of securing high wages, unusually high wages; is that your idea?

Mr. SANDERS. Rather than bringing about stability of output and security of jobs. I think they ought to put that first in their policies because it would fit into agricultural policies, the nature of agriculture, and then they would get the support of agriculture at all times in that sort of a program.

Senator MURRAY. Well, how would that be brought about? I cannot quite understand your position.

Mr. SANDERS. We are proposing one thing that I think would be useful in that respect, and that is that labor adopt a parity principle of wage adjustments similar to the parity principle which agriculture has accepted.

Senator MURRAY. You have the idea that labor would adopt that system of parity wages, something similar to what the farmers have developed in this country?

Mr. SANDERS. Yes; we do. We believe it would be very useful, especially during declining price levels.

Senator MURRAY. Do you think that industry would accept that sort of a proposition and would be willing to allow labor to go into their internal affairs and determine exactly what profits they were making? Do you think they would accept the proposition where labor could go into their internal affairs and determine what salaries they were paying to their officials and what bonuses?

Mr. SANDERS. Why would that be necessary, Senator? I do not see that that would be necessary to establish a parity wage.

Senator MURRAY. Well, how would you establish a parity wage?

Mr. SANDERS. Establish a parity wage and tie it to a cost-of-living index on a sound cost-of-living index.

Senator MURRAY. Well, it seems to me that is what labor is trying to seek today, to try to get wages that will enable them to live under conditions that prevail at the time. That is the reason we have these arguments with reference to increased wages. It is because of the increased cost of living and the desire of labor to improve their income so that they may continue to live.

Mr. SANDERS. Labor always does that in a rising price level. I will agree with you there. They constantly talk about the cost of living going up, and that they need an increased wage, but just as soon as the cost of living starts down, their principal activities revolve around trying to maintain their wage levels regardless of price levels.

Senator MURRAY. Well, I do not see how you can arrive at that opinion. It seems to me that when wages go down, when costs of living go down, eventually wages will go down. That has always been the history, especially where it comes as the result of a depression.

Mr. SANDERS. Wages fell, but not as much as cost of living, although their actual purchasing power, as I have quoted here, has actually risen. Purchasing power of wages has risen during every depression. In the General Motors contract, which is tied somewhat to a parity concept, labor accepted the parity concept going up, but accepted only half of it when the cost of living started down, which shows that they still fight against adjustment downward with price levels.

Senator MURRAY. You have made a very careful study of this situation, then, have you, yourself personally?

Mr. SANDERS. No, I would not describe my study as a careful study. I do not pose as an expert.

Senator MURRAY. Did you prepare this statement yourself?

Mr. SANDERS. I prepared all of it; yes, sir.

Senator MURRAY. You prepared it yourself, and it represents your views?

Mr. SANDERS. It represents the Grange's views. Mr. Goss checked it very carefully, and agreed with all of it.

Senator MURRAY. And it represents the attitude of your organization on all the problems which are discussed in it?

Mr. SANDERS. Yes; it certainly does. We try to follow those very carefully because otherwise we get into trouble with our own organization if we do not.

Senator MURRAY. That is all.



The CHAIRMAN. Senator Neely.

Senator NEELY. Do you think that wages are now too high?

Mr. SANDERS. Well, I doubt that. I doubt that they are. I think if the present downward trends in agricultural income go much further, they will be decidedly too high for the good of labor and for the good of us.

Senator NEELY. Do you think agricultural prices are too high?

Mr. SANDERS. What is that?

Senator NEELY. Do you think agricultural prices are too high?

Mr. SANDERS. No, sir; and I would like to tell you the reason for that. I do not think they have been but very little too high at any time, but we think they have been high enough.

Senator NEELY. Do you think that wages have been too high at any time?

Mr. SANDERS. I would like to give you the basis for my answer, Senator. We have made a rather careful calculation on labor income of farmers in which we were guided by the BAE but they do not take the responsibility because they have not published it.

But we calculated the labor income of the farmers of this country since 1910, I believe it was, so that we could compare it with the labor income of industrial workers.

Farmers got for their labor an amount greater than the industrial wage worker—only 2 years during that entire 37 or 38 years, and those were last year, and in 1917, I believe.

The average farm-labor wage, the labor wage of the operator of farms, was less than two-thirds of the average industrial wage by the industrial worker during these 38 years.

Now, we do not believe that that should be the situation. We believe the farmer is entitled to a wage that is equal to the industrial worker, and we think he is about at that level at the present time, and we think it is a fair wage for him.

Senator NEELY. During the last year, the farmer's compensation, has, on a percentage basis, increased more than that of the laboring man, has it not?

Mr. SANDERS. Oh, yes; because you are measuring an income that got as low as 8 percent of the average industrial worker's wage, in 1933; it got as low as 8 percent.

Senator NEELY. In 1933 there were over 15,000,000 unemployed. Do you take into consideration the average wage of the employed and unemployed, or are you confining yourself to the few who were employed?

Mr. SANDERS. Either way you compare it. By averaging his wage with all wage workers, whether they were employed or not, the farmer got about two-thirds as much as he should have gotten compared to—

Senator NEELY. Do you know any industrial worker who, in your opinion, has received in the last year a higher wage in proportion to what he is given in return for it than the farmer received last October, when cattle sold as high as \$42 a hundred pounds on the Chicago market?

Mr. SANDERS. Senator, I stated to you that the farmer last year got more than the average industrial worker. You can pick out the individual cases where farmers got entirely too much, and industrial workers got entirely too much.



Senator NEELY. Tell me of one case in which you think the industrial workers have received too much. Let us be specific about it.

Mr. SANDERS. I do not know.

Senator NEELY. Frankly, I think that when beef is 42 cents on the hoof, it is too high. Can you tell me of any comparable wage that was received by an industrial worker on the basis of any previous history of wages.

Mr. SANDERS. I think bricklayers got decidedly too much as compared to farmers, the beef farmers, too, because you are talking about the beef price, not the cost of raising beef. You see, you are thinking only of the price that they got and not the cost of producing beef.

Senator NEELY. I am thinking about both. I worked on the farm until I was 18 years of age, and I know something about farm problems.

Mr. SANDERS. And you think the farmers are getting entirely too much money?

Senator NEELY. I do not think that at all, and I take it for granted that you do not think they are, but from some of the things you said, I fear that you think labor is getting too much.

Mr. SANDERS. I want the privilege of disabusing you of that misconception of what I said. I stated a while ago that I doubted that the industrial wages are too high now, but they would be too high if the farmer's income slumped very much more. I want to make it quite clear that I do not want to be quoted as saying that industrial wages are too high.

Senator NEELY. Mr. Sanders, on the second page of your written statement is set forth what apparently is a resolution adopted by the Grange at its November session:

We believe the enactment of the Taft-Hartley Act has had a corrective effect on labor and management disputes.

Was that adopted by resolution in the Grange?

Mr. SANDERS. Yes, sir. I think by a unanimous resolution. I am pretty sure it was. If there was any vote against it, I do not recall it at all.

Senator NEELY. Do you remember whether the Grange ever adopted a similar resolution relative to the Wagner Act?

Mr. SANDERS. No, I am sorry I do not know. I do not believe they did.

Senator NEELY. Do you know whether it ever adopted a similar resolution relative to the Norris-LaGuardia Act, the anti-injunction law?

Mr. SANDERS. I am sorry, I cannot even answer that. I should have looked those two points up. If you would like for me to look them up, I will be glad to file them with the committee.

Senator NEELY. I am reasonably sure that the Grange has not taken such action.

Mr. SANDERS. That it has?

Senator NEELY. That it has not.

Do you know whether the Grange ever adopted any resolution commending the Clayton Act that contains provisions favorable to labor?

Mr. SANDERS. I think probably they adopted a favorable resolution. I am not sure. I can look all of these things up, and can file them with you if you want me to because I did not go back and look them up.

Senator DONNELL. Would the Senator be willing that Mr. Sanders file those?

Senator NEELY. Oh, yes; I shall be glad to have them.

Mr. SANDERS. I will be glad to have them.

Senator NEELY. Are you personally in favor of the use of injunction in ordinary labor disputes?

Mr. SANDERS. No, I do not think—you are asking me as representing the Grange?

Senator NEELY. Yes.

Mr. SANDERS. No, I do not think the Grange would be, because we believe that bargaining in good faith can solve most all of the ordinary labor disputes.

Senator NEELY. When it fails to solve them, are you in favor of laboring men being enjoined from striking?

Mr. SANDERS. Not ordinarily; no, sir. I just tried to say that just now, but we are in favor of the use of the injunction in such restrictive strikes as the secondary boycott and jurisdictional strikes if it is necessary to stop them; and we are in favor of the use of the injunction when in a national emergency safety and health are involved.

Senator NEELY. Particularly, I suppose, against the United Mine Workers and Mr. Lewis?

Mr. SANDERS. Well, we certainly would like to apply it against him because we think he has been one of the greatest sinners of recent years. [Laughter.]

Senator NEELY. There might be differences of opinion about that.

Mr. SANDERS. Well, I was just expressing my opinion, you know. [Laughter.]

Senator NEELY. You say that you are opposed to high initiation fees and dues in labor unions. Do you have any particular union in mind?

Mr. SANDERS. I tried to avoid bringing instances, but I have been told, for example, that the Cleveland moving picture operators require initiation fees of \$1,000, and there were plenty of cases in the war that I saw where carpenters who were not good carpenters at all, and did not pretend to be good carpenters, had to pay excessive fees to join the carpenters union in order to get to work on camps, and I do not think that is American at all, because it principally benefited the leaders of the union and not the worker.

I saw plenty of men who were just terribly upset by such requirements when they were trying to earn a living and help out on the camps, farmers among them.

Senator NEELY. Those are exceptional cases, are they not?

Mr. SANDERS. Well, exceptions or no exceptions, we are talking about the situation where exceptional fees are charged. We believe that is one way of introducing restrictive labor practices by limiting the membership.

Senator NEELY. From 1941 to 1945, I happened to be Governor of a great industrial State, West Virginia. During that period I received just one complaint from a laboring man against what he considered an exorbitant membership fee.

Mr. SANDERS. I do not say there have been complaints.

Senator NEELY. I do not say that there were not isolated cases of complaints, but I do know that they have not been general.

On page 3 of your written statement you say that you are opposed to mass picketing.

Mr. SANDERS. Opposed to what, please?

Senator NEELY. Opposed to mass picketing.

Mr. SANDERS. Yes.

Senator NEELY. That the Grange is opposed to mass picketing but that all workers of a struck plant "should be protected in their right to picket peacefully." What do you mean by "mass picketing"? For instance, if a great manufacturing establishment has a daily average of 5,000 employees, how many of them might, in your opinion, properly picket during a strike?

Mr. SANDERS. Well, you see what we say there, we say that all workers in that plant which is truck have a right to picket. That would mean 5,000 in that case, would it not?

Senator NEELY. Then, if there are 5,000 employees, and they are all on strike, you are in favor of maintaining the right for 5,000 of them to picket that plant; is that true?

Mr. SANDERS. We think they have a right to, so long as they do not use intimidation or coercive methods in their picketing. We think they have a right as American citizens to express their opposition to the management.

Senator NEELY. So long as they use no violence.

Mr. SANDERS. That is right.

Senator NEELY. Then, you would be in favor of the full 5,000 having the right to picket?

Mr. SANDERS. That is what the resolution states, yes, sir.

Senator NEELY. You have spoken of a number of features in the Taft-Hartley Act. Is there anything in the specific provisions of the Taft-Hartley Act to which the Grange is opposed?

Mr. SANDERS. Is there what?

Senator NEELY. Is there any specific provision in the Taft-Hartley Act to which the Grange is opposed? If so, please tell us what it is.

Mr. SANDERS. Would you like for me to read the last four pages?

Senator NEELY. No, I think you have read enough.

Mr. SANDERS. They are all in there, Mr. Senator.

Senator NEELY. I would like to have you answer that question.

Mr. SANDERS. They are all provisions which we are in favor of retaining. You say opposed to, are we opposed to any provisions in the act?

Senator NEELY. Please read the question to him, Mr. Reporter.

(Record read, as requested.)

Mr. SANDERS. Well, we think the provision of the Taft-Hartley Act prohibiting political expenditures—I mean expressions in their papers in favor of candidates is wrong, yes. That is one provision.

Senator NEELY. Are you of that opinion because your Grange publishes a paper, and you are afraid that the prohibition might extend to you later on?

Mr. SANDERS. I never heard one bit of discussion along that line when these resolutions were up, and I do not think anybody in the Grange is afraid of that.

Senator NEELY. Is there any other provision in the Taft-Hartley Act to which the Grange is opposed, so far as you know?

Senator AIKEN. No. 31.

Mr. SANDERS. What is 31?

Senator AIKEN. No. 31; No. 30 contains provisions to which you are opposed, on page 11.

Mr. SANDERS. The provision where employees could abuse the calling of elections where the two unions are contending for recognition, we believe that probably some provision should be written in the law which requires the union which is asking for an election and replacement of the representative union—that such a contending union should have a certain strength, and that it should be required to prove its numerical strength.

Senator NEELY. Now, are those the only provisions of the Taft-Hartley law to which the Grange is opposed?

Mr. SANDERS. Well, I am not sure of that, no, sir. I would not be sure. I did not list those. We are trying to list things that we wanted to see saved, Senator, and not those to which we were opposed. We were pretty sure the Democrats would get all of those that we were opposed to, and we did not think we would have to spend any of our efforts trying to kill these provisions.

Senator MURRAY. Do you not think, Mr. Sanders, that the Republicans would be interested in finding some of those points?

Mr. SANDERS. Yes, I believe so.

Senator MURRAY. As well as the Democrats?

Mr. SANDERS. Yes, sir, I believe so. [Laughter.]

Senator NEELY. Except for a few like Senator Morse and Senator Aiken, I would not be too enthusiastic about that belief.

You are familiar with the Taft-Hartley Act, are you not?

Mr. SANDERS. I am what?

Senator NEELY. I say, you are familiar with it?

Mr. SANDERS. I am not an expert on it; no, sir.

Senator NEELY. Have you read it recently?

Mr. SANDERS. I have read portions of it time and again recently.

Senator NEELY. Do you remember page 11?

Mr. SANDERS. Yes, sir.

Senator NEELY. At the top of the page the following appears:

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (a) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) The name of such labor organization and the address of its principal place of business;

(2) The names, titles, and the compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances—

and so on and so forth, and there are about 30 other similar requirements running down to the bottom of that page.

Do you know whether the Grange is in favor of all those provisions of the Taft-Hartley law?

Mr. SANDERS. I do not think we would see any opposition to those.

Senator NEELY. You would be in favor of them?

Mr. SANDERS. I think we would be in favor of filing such a report with respect to our own organization if the law thought it was necessary in order to bring about social—

Senator NEELY. Does the Grange have an initiation fee?

Mr. SANDERS. It has.



Senator NEELY. How much is it?

Mr. SANDERS. It is \$3.

Senator NEELY. Does that include——

Mr. SANDERS. That is quite a bit less than a thousand.

Senator NEELY. Is that \$3 for each member of the family or——

Mr. SANDERS. Three dollars for the man, \$2 for the woman, and \$2 for additional family members.

Senator NEELY. How much would that be for a man, his wife and, say they had 10 children, how much would that be? [Laughter.]

Mr. SANDERS. That would be five, and 10 times 2 or it would be \$20, and that would be \$25 for all of them, the whole family, if they were all above 16 years of age.

Senator NEELY. If they are under that they cannot join?

Mr. SANDERS. No; they cannot join.

Senator NEELY. What are the dues? What would the dues be?

Mr. SANDERS. They vary from one locality to the other, but I belong to the Potomac Grange here in Washington, and it costs me \$2 a year.

The Grange is a very poor organization, Senator. We do not have very much lobbying work here. I am the sole lobbyist. [Laughter.]

Senator NEELY. I have seen few lobbyists for the Grange, but I have seen many for other organizations. In fact, I see all who ask to be seen, regardless of whom they represent. I do not pay too much attention to their recommendations. But I patiently listen to their expressions of opinion, and then let my conscience and my judgment be my guide.

Mr. SANDERS. Senator, I trust you pay a lot of attention to what the Grange says.

Senator NEELY. Oh, yes. I have not seen any of its representatives for a long time. But I am always interested in what any farm organization says because the first 18 years of my life were spent on a farm. Farming is the oldest of occupations. It began with Adam, and when it ends the world will end.

Your testimony has caused me to fear that there is hostility in your organization toward union labor. You have said that you are opposed to the closed shop. Within the last 40 years men have been beaten and maimed in my State for having recommended not the union shop, in particular, but the unionization of labor in general. I believe that if the closed shop were entirely abolished, every legitimate labor organization in West Virginia would eventually perish.

Mr. SANDERS. I could not agree with that, at least, we do not believe that. If we did we would be for the closed shop, Mr. Senator.

Senator NEELY. You personally believe in the open shop, do you not?

Mr. SANDERS. The union shop as provided under the Taft-Hartley law is not very objectionable to us because we believe that it does offer an opportunity for membership to be brought into the union and to prevent membership from being unjustifiedly fired because the leaders feel that the man is not entirely——

Senator NEELY. Do you not think it makes possible——

Mr. SANDERS. May I answer the two statements that you made about our opposition? I believe you used "intensely opposed" or some such term.

Senator NEELY. I used the word "hostility," and if you object to that word, I shall withdraw it.

Mr. SANDERS. It does not apply to the Grange at all, Senator.

Senator NEELY. I thank you for that assurance.

Mr. SANDERS. We say we have as much dislike as you have for such banditry and un-American acts as you have quoted in connection with the labor organization in Virginia.

Senator NEELY. West Virginia.

Mr. SANDERS. West Virginia. I think we are just as vigorous in opposing such acts as we can be, as anybody could be.

Senator AIKEN. As I understand it, Mr. Sanders, the Grange raises particular objection to applying a policy of scarcity.

Mr. SANDERS. That is right.

Senator AIKEN. When we begin to have hard times, whereas the farmer cannot reduce his crops and live that way. You believe some way should be worked out whereby the manufacturer and laborer would also continue to produce and feel that the depression should be made less severe, if that could be brought about.

Mr. SANDERS. Yes, Senator, that is our principal objection, but it does extend throughout all labor practices that undertake to create scarcity of membership, restrictive policy, featherbedding, and things like that that undertake to curb the output of labor in order to gain their point.

Senator AIKEN. Does the Grange—

Mr. SANDERS. We are in favor of strikes as a means of enforcing their just demands, but not as the final method of enforcing their unjustified wishes.

Senator AIKEN. The Grange is also opposed to a policy of scarcity in regard to farm production, is it not?

Mr. SANDERS. We certainly are.

Senator AIKEN. Whether it is brought about by Government controls or any other means. That is all.

Senator NEELY. You have specified all the provisions of the Taft-Hartley law of which, so far as you know, the Grange is in favor?

Mr. SANDERS. Is opposed.

Senator NEELY. Yes, I mean to which it is opposed.

Mr. SANDERS. As far as I know, but I would be glad to look through it and list a few of them.

Senator NEELY. If you find any others, I shall be glad to hear you state them.

Mr. SANDERS. Would you agree that the average farmer should have for his labor the same earnings or approximately the same earnings as the average industrial worker?

Senator NEELY. Subject to proper allowances for the difference in hazards to life, limb, and health, my answer is, "Yes." But we must remember, for example, that the man who works in a coal mine is constantly in danger as great as that of a soldier on a modern field of battle. There are no hazards on the farm compared to those of mining and railroading. Furthermore, the farmer's cost of living is less than that of the industrial worker, for the reason that the farmer is nearer the source of production of the necessities of life.

Mr. SANDERS. Senator, the farmer does get the things that he raises at wholesale prices. In other words, the price that he would sell them at a specific market place, and you could certainly credit him up with that advantage.

But those things which he buys for his living are a good deal more expensive to him than they are to the laboring man because the farmer

has to pay transportation out to the farm for those items bought in town.

Senator AIKEN. I want to make one thing clear here, Mr. Chairman, and it is that the things the farmer produces on the farm and which are used by his family are included in the estimate of farm income.

Mr. SANDERS. Yes. In the estimate that I made, as well as his house rent and fuel, Senator.

Senator NEELY. Ever since I first became a Member of the Congress, I have done everything in my power to protect the farmer, and I propose to continue to pursue that course.

Let me assure you that I am wholeheartedly in favor of equally high compensation and living for all farmers, and all other workers, regardless of the field in which they are employed.

Mr. SANDERS. I was pretty sure that was the case, but I was a little doubtful whether you thought the farmer was getting too much.

Senator NEELY. I do not think the farmer is getting too much in prevailing circumstances.

The CHAIRMAN. Senator Douglas.

Senator DOUGLAS. Would you be opposed to the closed shop if the unions were open?

Mr. SANDERS. If they permitted free access of membership and did not have provisions that would undemocratically put them out of the union.

Senator DOUGLAS. I am speaking of the union first.

Mr. SANDERS. That would be about the present provision of the union shop in the Taft-Hartley Act.

Senator DOUGLAS. Approximately.

Mr. SANDERS. Pretty close to the union shop. The Grange has not clearly expressed itself on the union shop except that it has a somewhat indefinite support of it, and we feel that that does give support to the union-shop provisions that were in the Taft-Hartley Act which permit the employer to hire a man whether he is a union man or not, and then prohibits the union from expelling him. But we do believe that the union ought to have the right, and I do not think that is provided in the Taft-Hartley Act, to demand that he reasonably obey the rules that are set democratically by the union, and that he be loyal to the union.

We do not believe that he should be permitted in the union if he is trying to undermine the union and trying to kill it while he is a member.

Senator DOUGLAS. Well, I could not make out whether your objection is to the closed shop as such, or to the closed union.

I wonder if you will clarify that point.

Mr. SANDERS. Well, I think our principal objection to the closed shop is its restriction of membership and the advantage that that gives the members in restricting their members' output, and we feel that is a restrictive policy; that if they are going to ask for permission for a closed shop, then it is just as necessary as it can be that the Government control their use or misuse of the closed-shop privilege, and I do not believe any union wants that.

Senator DOUGLAS. What I am trying to get at is this: Is not your objection primarily to closed unions rather than to the closed shop?



Mr. SANDERS. Yes; I would say that that would be the primary objection.

Senator DOUGLAS. And yet the Taft-Hartley law bars the closed shop even where the union is open. The Taft-Hartley law draws no distinction as to whether or not a union is open. It outlaws the closed shop for the open union as well as for the closed union.

Mr. SANDERS. You see, it seems to me that a closed shop becomes a union shop the minute it permits anybody to labor who is qualified.

Senator DOUGLAS. Well, the technical distinction, of course, is that in a closed shop a man must already be a member of a union before he is hired, whereas in a union shop the employer can hire a nonunion man on condition that after a passage of time, generally 30 days, he becomes a member of the union.

A union shop tends to provide for an open union, but a closed shop can also have an open union, and yet the Taft-Hartley law forbids a closed shop and an open union.

Mr. SANDERS. Do I understand that to mean that a man who wanted employment in a closed shop could join the union first and then if he were qualified to do the work, would that mean that they would permit anyone who was qualified technically to join the union?

Senator DOUGLAS. That is right, but that is prohibited under the Taft-Hartley law if he must have union membership prior to hiring.

Mr. SANDERS. Well, it seems to me that that is going the long way around. It seems to me that the provisions of the Taft-Hartley Act which permits a union shop and then permits the employer to employ any man he wants to and then, provided when the employee gets in the union that he join the union in good faith and not undermine the union, it seems to me that that is the democratic way of protecting labor's rights.

Senator DOUGLAS. Well, of course under the Taft-Hartley law the union can only ask for a union shop after there has been an election, and in that election, as you know, the union must win not a majority of the votes cast, but a majority of all those eligible to vote.

Mr. SANDERS. Yes.

Senator DOUGLAS. So that those who do not vote are counted as voting "no," even though they may have been ill when the vote was taken, or out of town, and the fact that those who stay away from the polls are counted as voting "no" in a sense destroys the secrecy of the ballot because the employer can tell if a man stays away that he is voting "no" and there can be some pressure put upon him to stay away.

Do you think that is a fair provision?

Mr. SANDERS. Of course, one difficulty I always have in testifying, Senator Douglas, is I am asked questions which are largely personal opinions, and I am supposed to testify for the Grange and as to what the Grange believes. The Grange has not expressed itself in such a detail as that, but personally I am inclined to believe that—

Senator DOUGLAS. Do you want to give your own opinion with the understanding you are not committing the Grange?

Mr. SANDERS. Would you give the statement briefly so I can understand clearly what you are asking?

Senator DOUGLAS. Surely. Under the Taft-Hartley law the union cannot ask the employer for a union shop unless in a referendum or election it has gained a majority, but this majority is not of the votes



cast. It must be a majority of all those eligible to vote, so that all those who do not vote are automatically counted as voting "No," even though, if present, they might have voted "Yes." All those who are ill are counted as voting "No."

All those who are out of town are counted as voting "no." and furthermore, it is a fact that those who do not vote are known to vote no, which, as I say, in a sense destroys the secrecy of the ballot.

Let us start simply. Is that the procedure that we have in elections of officials in our political elections?

Mr. SANDERS. No, no; not at all.

Senator DOUGLAS. Are not the unions those who obtain a majority of the votes cast?

Mr. SANDERS. Yes.

Senator DOUGLAS. Well, now, do you think the Taft-Hartley law should have the provision that it must be a majority of all those eligible to vote?

Mr. SANDERS. I doubt whether that is as democratic as we should require it by law. I believe that we would be in a very bad shape in electing our Presidents if we—

Senator DOUGLAS. We would never elect one, would we?

Mr. SANDERS. In other words, if we believe in democracy we should believe in it at every place, and I doubt whether that is as democratic as it should be, and I am inclined to believe the Grange would, if it spoke on that specific thing, say that it believed a majority of the votes cast should decide issues in labor elections.

Senator DOUGLAS. Well, that is a very fine and very generous statement, which I expected you to make.

Mr. SANDERS. Thank you, Senator.

The CHAIRMAN. Senator Humphrey.

Senator HUMPHREY. I was interested in your statement about the Taft-Hartley Act having brought about stability of employment. I wonder if you would care to develop that just a little bit.

Mr. SANDERS. Well, it is based largely on figures of man-days lost in strikes and reduction of those, as you are well acquainted with, I am sure, Senator. It is not based on an intensive study.

We believe that we are judging general principles of the bill. We feel that the provisions that I have enumerated in that are incorporated in the bill will necessarily in time mean for peaceful constructive settlement of disputes.

I hesitate to say this, but we do not believe the rank and file of the labor unions are so bitterly opposed to the Taft-Hartley-law provisions which have given them, we think, a greater voice in their unions.

Senator HUMPHREY. The other day I brought in for the record a statement from my own State of Minnesota, which is quite an agricultural State. It was a Minnesota poll. Of course I qualified the reference to the poll. It is a little dangerous to speak seriously of polls these days, but I also noted to my colleagues that that was one of the more accurate polls not only in the last election but also in recent years.

That poll indicated that 2 percent more of the people in the State of Minnesota who were interested in the Taft-Hartley Act, disapproved of its provisions. Two percent more disapproved than approved.

Mr. SANDERS. That almost matched the poll, did it not; the Democratic and Republican poll? That is just about the percentage that decided the election.

Senator HUMPHREY. What I am bringing to your attention is that before the election there were about 2 or 3 percent more people that approved the Taft-Hartley Act, and following January 1 when this poll was taken—I think it was on the 28th of January that the poll was released—2 percent more of our people disapproved of the provisions.

I think another startling fact was brought out by that poll, namely that only 55 percent of the people interrogated were familiar with the provisions of the Taft-Hartley Act.

Senator AIKEN. Mr. Chairman, may I ask the Senator, Did you not win the election by more than 2 percent?

Senator HUMPHREY. Thank you very much, Senator.

Senator AIKEN. It seems to me that you must have got the votes of quite a few people that approved the Taft-Hartley Act.

Senator HUMPHREY. Well, I was going to say I appreciated the statement of Mr. Sanders in here wherein he again set our minds at rest as to those who had a part in this victory. I think everybody goes around claiming who won the election. I have not been able to determine that yet except that the majority of those who voted——

Senator AIKEN. I wanted the Senator to realize that he had so much reactionary support.

Senator HUMPHREY. Senator Aiken, I found some good farmers out there who look upon the Taft-Hartley Act somewhat as you do.

Now in reference to stability and employment, I wonder if you are familiar with the man-days lost under the last statistics under the Taft-Hartley Act as compared to its first year of operation.

Mr. SANDERS. I do not believe I have observed those.

Senator HUMPHREY. They have been placed in the record before. I just asked our counsel here to get my pamphlet for me. I came down here without it this morning. He was just giving me the statistics.

He says there were 34,000,000 man-days lost in 1948, and 34,600,000 in 1947, a difference of 600,000; but the number of disputes had increased, if my memory served me correctly, in 1948. I wonder whether or not this is a fair period to base our calculations upon.

Mr. SANDERS. I doubt it.

Senator HUMPHREY. For example, you said to me right after the war and the immediate year and a half since the passage of the act, we have had relatively full employment, we have had all these pressures from high prices, the fluctuations in the market. That is hardly a good base period, would you say?

Mr. SANDERS. I doubt it, Senator. I might indicate though, I am an economist by profession.

Senator HUMPHREY. Yes.

Mr. SANDERS. And if I cared to try to prove something that was not necessary to prove by the figures, I might say that with greater disputes and a smaller number of workdays lost, that that indicated the Taft-Hartley law was functioning pretty well to reduce the length of the disputes.

Senator HUMPHREY. Or it might have indicated there was a greater willingness on the part of management to settle because of the rapid

rise in profits on which they could draw. We could have a mighty fine talk on this.

I was interested likewise in your comments with reference to labor, organized labor, and the farmer, the wage levels and farm income. I think you made the statement that in periods of a receding market or a depression, the effort of labor is to maintain wages, and that labor does on the average have a higher wage structure than, let us say, the farmer.

Mr. SANDERS. Yes, they do; I mean those that are working.

Senator HUMPHREY. For those that are working.

Mr. SANDERS. Even if you average those that are unemployed with those that are employed, you still have a higher wage rate of pay than the farmer gets, although the farmer is performing 100 percent full service.

Senator HUMPHREY. He is doing that, however, simply by the fact that he is on the farm and there is not much else that he can do.

Mr. SANDERS. Simply by the nature of the farm, yes. As I say, he just cannot stop the farm as a machine. It is not a machine that you can stop.

Senator HUMPHREY. He has this one advantage. I think, that he still can eat. I mean if there is a reasonable amount of seed available and a reasonable piece of fertile ground, he can still eat.

Mr. SANDERS. Yes; I would rather be on a farm in a depression than in a city out of employment, but I would rather be in a city on a wage during a depression than be on a farm, I will tell you that.

Senator HUMPHREY. On a wage.

Mr. SANDERS. Yes; on a going average wage, because the average wage actually has an increased purchasing power during a depression.

Senator HUMPHREY. Yes; that is correct.

Mr. SANDERS. And so you have just got a fault here that we should not, as I am trying to emphasize, make our labor laws in any way accentuate that fault. We should by all means, if we can set up labor laws that will keep laborers on the job more. We should do it; and that is the stand of the Grange in this case. We do not wish to appear unsympathetic with organized labor at all by presenting this case. On the contrary we want to try to present the case, that we are heartily in favor of the strong democratic unions.

Senator HUMPHREY. Now let me ask you a question. You said you are an economist, at least a student of economics. What was the relative position of farm income to labor income, industrial profits, industrial capital improvement during that period in American economic history when there was little or no union organization?

Mr. SANDERS. Well, of course labor was getting a very, very much lower wage, Senator, than it is now. Let us talk more specifically. We will say prewar, that is First World War, agriculture was getting relatively a much more satisfactory wage and profits. As you well know, agriculture constantly has tried to measure its parity on the 1910 to 1914 base because that was what we think was a fairly equitable income for agriculture; although we constituted at that time about 28 percent of the gainfully employed, we got only about 16 or 17 percent of the income of the Nation, I believe.

Senator HUMPHREY. That is correct.

Mr. SANDERS. I mean we did not get an average income but we got a relatively satisfactory income for the farmers. Labor during



those days unquestionably did not get a fair return for its efforts, and capital undoubtedly had the upper hand of labor, probably clear on up until the Wagner Act.

Senator HUMPHREY. Let me ask you more specifically what is the historical pattern? The reference was made so commonly to big business and its relationship to the farmer, farm income, worker and worker income. The famous Grange cases, for example, that were cited in the Supreme Court were based around some of those facts.

Mr. SANDERS. Well, we recognize that big business is managed by human beings, and that the success of any manager of a business depends on his making maximum profits for his stockholders and his directors. We do not feel that big business of itself is evil, but we do believe that uncontrolled business can get bad—and it does get highly concentrated in steel and coal and industries like that. For that reason we have said that we believed in industry-wide organization of labor if it is necessary in such big businesses where the management is highly concentrated in a relatively few hands. We see no way that labor can organize itself with the strength that will cope with that, unless it be on an industry-wide basis.

Senator HUMPHREY. I think your point of view is very fair on that. I want to say that in most of this I concur with the philosophy that you have enunciated here, and I am very familiar with the work of the Grange, particularly in our area. It is not as large as the Farm Bureau, but it is a very active organization.

What I am getting at now is this, and is something that really does disturb me, and because of my great respect for your organization and for Mr. Goss, I am concerned about the philosophy—I had better use a different word than “philosophy”—the understanding that exists within the organization of the National Grange and its relationship to the rest of the economy, particularly on the consumer-worker side.

I want my position quite clear so that we can talk about this next question. I believe in business, I believe in private business, I believe in business making a profit. I want to see reasonable full employment. I would like to see it as full as it could be, just as you do. I do not concur in restrictive practices whether the practice is in business or whether it is in labor.

Mr. SANDERS. Or agriculture.

Senator HUMPHREY. Or agriculture. I believe in production, and the farmer is a natural producer. You surely hit it right on the head. He believes in production. That has been one of his problems in a restricted economy, has it not?

Mr. SANDERS. That is right, in an unstable restricted economy.

Senator HUMPHREY. Are you familiar with what is happening with employment today in America?

Mr. SANDERS. Yes.

Senator HUMPHREY. Did you read about my section of the country? I think the Milwaukee Railroad just recently put off, I have forgotten the number, but quite a large number of workers.

Mr. SANDERS. Yes, I noticed that, and I noticed also that it was recently said that unemployment could rise considerably higher during the year than it has risen to the present time, which is around 3½ million, is it not?

Senator HUMPHREY. Yes. The Governor of my State just sent me a letter the other day informing me that the employment security offices



of the State of Minnesota, which State I always considered to be a rather stable and prosperous State, are in dire stress for administrative funds to handle the ever-increasing load of unemployment.

Now I have been listening recently here in Washington, and looking over some of the reports of the Joint Economic Committee. Some of the reasons for unemployment may be that profits have not been very good and therefore, of course, we shall have to have some slow-down or some curtailment of the tremendous employment. The consumer buying power has gone down. Business, in other words, is not too good. Mr. Nourse says it is disinflation. I do not know what it is. It does now smack well in my memory.

I remember something like this when I was finishing high school and entering college. Now do you think the Taft-Hartley Act has provided any stability for these 3½ million men who are out of work at the present time? What are they going to live on? I do not know what groceries cost back in Minnesota now, but I know what we have to pay for them down here in Washington.

Mr. SANDERS. You have asked me a question if people are unemployed, which is impossible to answer, except that it has not provided the stability that they need. Of course I do not believe the Taft-Hartley law has figured much in that unemployment. On the contrary, it might have helped out.

I believe that we are in a position that could do a great deal of damage to agriculture, to labor, and to industry, because keep in mind that industry suffers really probably worse than others do in a real healthy depression because their profits are completely wiped out.

Senator HUMPHREY. In what kind of depression?

Mr. SANDERS. Healthy—that is, a full-force depression. Their profits completely disappear as a rule. They did in 1933, most of them.

Senator HUMPHREY. No. As a matter of fact, the economic facts of 1933 reveal that the profits did not completely disappear.

Mr. SANDERS. I had the impression that the figures indicated that they did disappear for most concerns—well, not all profits, of course.

Senator HUMPHREY. I am trying to recall from memory certain facts. Here again I have a distinguished economist at my right; and I should not go into it. For purposes of clarifying what I consider to be an economic point of view that you have, if I recall correctly the prices of manufactured industrial products from 1929 to 1933 went down about 30 percent, 28 to 30 percent. In other words, there were rather fixed costs there.

Mr. SANDERS. Yes; that is right.

Senator HUMPHREY. But wage income went down—I am going to underestimate my figure so I will not be accused of overestimation—about 58 to 60 percent, and farm income went down from 60 to 65 percent.

Senator AIKEN. Mr. Chairman, may I make a statement right there? Up to 1934 insurance and interest were considered as farm income, although they were actually expenses, and the \$1,000,000,000 of farm income in 1934 was largely represented by—

Senator HUMPHREY. Did I say “farm”? I said “industrial.”

Senator AIKEN. You were giving the amount farm income went down totally.

Senator HUMPHREY. Yes.

Senator AIKEN. After 1934 the method of figuring farm income was changed so as not to include insurance and interest, which very obviously should have been excluded long before that time.

Senator HUMPHREY. That is right.

Senator AIKEN. And a large part of the farm income up to 1933 and 1934 was represented by farm expenses in the form of insurance and interest.

Senator HUMPHREY. I bring this to your attention, Mr. Sanders, because I do take exception to your remark that the Taft-Hartley Act has brought about a stability of employment. I do not believe that the purpose of the Taft-Hartley Act actually was to bring about a stability of employment.

Maybe it was one of its purposes and objectives, at least its asserted purpose and objective, to bring about a more stabilized relationship in the area where there was employment.

Maybe we are cutting it pretty fine, but I do not think it has done much to promote job opportunity—that is my point—or to keep people on the job. Maybe the asserted purpose was to provide a better stability within the employment field once one was employed, that is employer-employee relationship, but as far as providing employment opportunity or stability of the Nation's employment to keep what we call reasonably full employment, I do not think that it—

Mr. SANDERS. No, I would agree with you on that last statement.

Senator HUMPHREY. I may have misinterpreted your statement.

Mr. SANDERS. But it is intended for promoting, and we believe it does do it. We believe that it may be imperfect and it may be worded in a very obscure way and a very complex way, but it is intended to facilitate settlements of disputes and therefore keep people on the job turning out products.

Senator HUMPHREY. I am glad that you brought that up.

Mr. SANDERS. We believe in that respect it is a stabilizer of our economy.

Senator HUMPHREY. It is your feeling that it does promote settlement of disputes?

Mr. SANDERS. Yes, sir.

Senator HUMPHREY. That is your feeling. I want to examine you on that point. I will tell you it is my feeling that it does not, so we know where we stand before I start asking questions.

Would you, for example, call a settlement of the farm mortgage problem merely an extension of the mortgage? You know mortgages are quite common amongst our farm economy, at least they were, and we are getting back to them again.

Let us say that you have a \$10,000 mortgage on the farm and you can refinance that mortgage after the period when it is supposed to be paid off arrives. It has not been paid off, so you refinance it. Would you call that an alleviation of the financial difficulty of the farm?

Mr. SANDERS. Well, in some cases it is, but I think the point that you are trying to bring out, it would not be a settlement of the mortgage.

Senator HUMPHREY. That is right, it would not be a settlement of that economic difficulty, would it?

Mr. SANDERS. It would be an extension of the mortgage.

Senator HUMPHREY. All right. Now if an injunction prevails in a labor dispute, an injunction that lasts 18 months, or an injunction

that lasts 14 months, and the National Labor Relations Board never gets around to ascertaining the facts, that is, to making a judgment on the facts as to whether or not there was an unfair labor practice, as to whether or not there has been a breach of the law, would you call that a settlement of the dispute?

Mr. SANDERS. No, indeed it would not be, but I think the fault is in the administrative machinery. We had better get administrative machinery that will act and act quickly.

Senator HUMPHREY. I agree with you on that, but the administrative machinery that handles this dispute has been established by the Taft-Hartley Act. You are a fine witness, but, as you have admitted, you are not an expert on these things.

I do not claim to be one either, and I am sort of happy that I have not been one because I have been learning a good deal at these hearings. I have found in many dispute cases brought to our attention that have had headlines and have been talked about and have been kicked around by argument, that most of these dispute cases are still in dispute; that actually what the Taft-Hartley Act has done has been to give to labor-management relations a sort of pain deadener. It is an overdose of opiates, an economic opiate.

In other words, the general counsel has gone in and obtained through his discretionary powers an injunction or under a mandatory unfair labor practice has obtained a restraining order, yet the problem itself in many instances has not been resolved. Now, would you say that is good labor-management relationships?

Mr. SANDERS. I do not know, under the conditions that you set down, but it seems to me that labor is more fully employed than it ever was. Labor is receiving a reasonably fair wage. I am not talking about specific cases, but I am talking about the general level, and it seems to me that we have had less strikes since the Taft-Hartley law was enacted.

Senator HUMPHREY. They have no strikes in Russia, for example, and Hitler—

Mr. SANDERS. We are not seeking that sort of system, however.

Senator HUMPHREY. You know how they stop it. They stop it by government order, the power of the state, and I am concerned seriously and I think very honorably and honestly concerned about this power of government to just order things to be done without the principle of equity being served or the principles of fairness being served.

Mr. SANDERS. Senator, I do not know. I am wondering if the injunction has not been used in a relatively very, very few cases that have been called before the National Labor Relations Board. What percentage have they actually used the injunction for?

Senator HUMPHREY. My colleague here to my right has just said to me, if his own memory serves him well, it is 42 major cases, and 40 of them have been against labor.

Now here is the point about the injunction. An injunction is put on, which does not settle the dispute. Let us say it goes for 10 months, 14 months, for any length you would like to take, because many of them go a long time. As a matter of fact, it takes about 600 days to get a dispute case, starting out with charges and taking it up through the National Labor Relations Board.



I brought those figures into testimony here the other day. Now, let us say that at the end of this time the National Labor Relations Board rules in favor of the union, saying it was not an unfair labor practice, and saying that the union members were absolutely all right in what they are doing.

Then, you see, whatever period of time the injunction may have been in effect there has been a denial of what we may call an equitable settlement of that particular dispute.

The International Typographical Union has paid out millions of dollars in benefits, and that money has not come out of the union treasury. It has been an assessment upon their members who have been working. I forget how many assessments they have had, but assessments have been paid. The assessments are to take care of strike benefits.

Now, the general counsel has an injunction against the International Typographical Union. The National Labor Relations Board has never settled this case, and yet here are a group of employees who over their history of a hundred years in America have had one of the finest records of labor-management relationships of any organized group of workers in the history of the American economy, and I would say in the history, possibly, of the world economy. They have been written up as a very model union.

Now, I am not going to judge the merits of the case. I am not a judge here. All I am asking is, Is it not a good law which permits a group of workers who are respectable, responsible citizens, at least a vast majority of them, to suffer the impact of an injunction to pay out benefits from their own hard-earned money, and maybe when the thing is all settled ultimately by the National Labor Relations Board, they will have been found to be right? Yet for this period of time they will have settled under the Taft-Hartley Act.

Mr. SANDERS. I think the labor laws should by all means facilitate settlement and should not delay settlement, and I do not think the injunction should be used as a punitive measure in any sense, that it should be used to restrain during a time when the facts can be found out—

Senator HUMPHREY. Quickly.

Mr. SANDERS. Quickly, yes; by an administrative machinery that is fair and unbiased and quick in its operation.

Now, if the Taft-Hartley machinery does not do that—and I am not very well acquainted with the mechanics of it—it should be so amended as to facilitate consideration of all the disputed elements and thus come to a quick decision.

Senator HUMPHREY. In other words, if we find that out here from the evidence—I have given you just my point of view and you have no reason to accept my point of view, but I mean if the group finds that out from the evidence—you would say that is something that should be corrected if there is undue delay, for example, in the adjudication of these disputes.

Mr. SANDERS. By "undue delay" I would say such delays as keeping an injunction on for 14 or 18 months as you have described are certainly, "undue delays." Surely there is some way that will enable us to set up administrative machinery that will operate faster and more efficiently than that. What it is I do not know.



Senator HUMPHREY. Well, I am glad to get your point of view, and I knew that you would be fair-minded about it. I just want to hear from you as to how you feel about it.

Now one other thing that you brought to our attention, and I know that this is something that has been talked about a great deal, and something that is talked about a great deal must possibly have some grain of truth to it. I refer to the initiation fee. We have had some highly accredited and respectable trade-union leaders before us talking about initiation fees. I am familiar with the initiation fees of motion-picture operators. However, I might say that most of the motion-picture industry is rather monopolistic.

Mr. SANDERS. I think so, too.

Senator HUMPHREY. You said here a while ago in answer to Senator Neely that there were some farmers possibly who had made a great profit on the market. I mean a limited number of farmers. In other words, in any kind of situation there are a few people who seem to get a few extra breaks or at least make those breaks. Is that right?

Mr. SANDERS. Yes; undoubtedly there are farmers, as there are in any industry, that are exceptionably able to obtain a much larger than average income.

Senator HUMPHREY. But you and I are of the opinion that that is no reason to call farmers profiteers, because they are not. You are absolutely right. The farm group as a group is still one of the lowest income groups of America.

If my memory serves me correctly, the ninth Federal bank district report indicated here in the month of October 1948 that the farm income, farmers as a group, was one of the low income groups in America.

Mr. SANDERS. Yes.

Senator HUMPHREY. Despite the so-called high prices and everything else in terms of real income. Consider what they have to pay for what they get on the farm and the prices that they get for the material produced and shipped from their farm.

Mr. SANDERS. Well, the Grange feels that the income of the farmers in the last few years has been satisfactory. We do not feel that they are getting—

Senator HUMPHREY. Over a long period of time.

Mr. SANDERS. As high an income as a lot of people think they are getting.

Senator HUMPHREY. I agree with you 100 percent.

Mr. SANDERS. We feel they are getting approximately a fair income under present conditions.

Senator HUMPHREY. There are some people who say these farmers ought not to have any protection. "Look at the prices they are getting." There are some people who say that.

Mr. SANDERS. That is right.

Senator HUMPHREY. I think those people are just victims of their own ignorance. I do not think they understand what is really going on and what really happens in the farm economy.

Now, there are some people that are saying, "Look at these workers, look at the wages that they are getting and look at these unions, look at the initiation fees they are getting."

We had some abuses of initiation fees in the early days of the war. Those abuses were corrected and we had some other abuses in the early

days of the war. I remember reading article after article on other things that happened on the economic scene that were a bit abusive. All I am simply saying to you or asking you is this: Do you really feel that organized labor as a group, as an organized group, has excessive initiation fees?

Mr. SANDERS. Well, I doubt that they do, Senator, but I do believe that certain unions have abused this means, and have used that as a method of being restrictive in holding their membership to a more or less closed membership.

Senator HUMPHREY. Do you think that we ought to legislate on the basis of the very limited—as a matter of fact, the evidence we have had here in this testimony up until today has indicated very little abuse of the initiation fee. That is my candid observation. Do you think we ought to legislate concerning initiation fees?

Mr. SANDERS. That I could not answer, but I do say that America has no place for a labor union that purposely charges excessive fees in order to restrict its membership. That is not democratic.

Senator HUMPHREY. I agree with you, it is not democratic.

Mr. SANDERS. It is monopolistic and against all the principles of free enterprise and democracy, and something should be done if it is extensive enough.

Senator HUMPHREY. Yes, if it becomes sufficiently extensive.

Mr. SANDERS. That is right.

Senator HUMPHREY. So that if it thwarts the economic opportunity of a vast number of our people, you would say something should be done?

Mr. SANDERS. Yes, and I do not know how extensive it is.

Senator HUMPHREY. And it is our job to find out the extent of it.

Mr. SANDERS. Yes, sir.

Senator HUMPHREY. And I intend to be one who does find out.

I would just like to say this about wages. In 1945 the average gross weekly wage of the industrial worker in manufacturing establishments was \$44.39 a week. In 1946 it was \$43.74 a week. In 1947 it was \$49.25 a week.

Now, those are actual dollar incomes. They do not consider anything about what has happened to costs of goods. This is from the President's Economic Report.

Would these wages indicate to you that the workers under the old Wagner Act in 1945 and '46 when they got \$44.39 a week and \$43.74 a week, were abusing their economic power? Now most of the people in manufacturing establishments, at least a good proportion of them, are unionized.

Mr. SANDERS. I doubt whether those average figures, Senator Humphrey, would reflect whether or not there are abuses. There might be even extensive abuses because if I recall, in those days maybe not over 25 percent of labor was unionized.

Senator HUMPHREY. In the manufacturing establishments more of them were unionized.

Mr. SANDERS. Probably so, but not in those plants that enter into the average figure. I do not believe that abuses of labor could be judged by figures of that kind.

Senator HUMPHREY. Well, at least the figures will give you some indication.

Mr. SANDERS. I do not think they are getting too high a wage.

Senator HUMPHREY. Because you see, for example, in the same year, in 1945, corporate profits were \$8,700,000,000. In 1946 when the wage income went down about 80 cents a week, corporate profits went up \$4,100,000,000 above what they were in 1945. They went up to \$12,800,000,000.

That perhaps was one of the reasons we had a lot of industrial strife. At the same time—and I have said this before, but actually it just astounds me—from 1940 to 1948, a period of 8 years, \$106,700,000,000, net after taxes, after deductions have been made, after the corporate statement has been filed, net profit on the part of American corporate wealth, \$106,000,000,000.

Mr. SANDERS. We do not have any defense for that.

Senator HUMPHREY. I am sure you do not have any defense of it, but it was right at that particular time at the peak of that when many of these disputes which precipitated the Taft-Hartley Act arose.

Now, the Taft-Hartley Act registers concern over high initiation fees, and you say if abusive they ought to have some concern, but that same Congress and which passed the Taft-Hartley Act and was concerned about high initiation fees, apparently was not concerned over high prices. I am talking about what is fair in the American economy.

Mr. SANDERS. Of course that was about the stand of the Grange, but we feel our position is this: that in a democracy, a free enterprise system, the only effective way of bringing prices down in peacetime is to produce as much as possible and to eliminate the cause of the inflated prices, which is a scarcity of consumer goods.

Senator HUMPHREY. Yes.

Mr. SANDERS. And the Grange's policy was that the intricacy of a control machinery would be so great that it would fall down; and that black market activity would ruin its operation in peacetime. Now in wartime it does not do that so much.

We agree that a control of prices in wartime is the proper thing to do, but we doubt that we could institute an all-out control of prices in peacetime. Furthermore to do that we would necessarily have to control profits and wages.

Senator HUMPHREY. Yes, we would.

Mr. SANDERS. We would have to take hold of wages and profits. That would bring regimentation to a profound extent, we think. We cannot agree that that is the proper approach in times like these.

Senator HUMPHREY. Well, I am glad to get your point of view. I want to congratulate you for not having put into the newspapers any full-page ads, at least. You have conveyed your ideas about it by having one good legislative representative.

Mr. SANDERS. A full-page ad would break the Grange, sir.

[Laughter.]

Senator HUMPHREY. That is right. It did not break the NAM, though, did it?

Now I have just a few more questions. You have made a very pointed statement on the right of an individual worker or a group of workers to strike to protect their economic rights or their economic position. If there is a strike in a plant—let us not put a quality of fairness in this—let us say the employer brings in replacements into the plant. Here are men who have been working in the plant out on

strike. Let us say they have worked there for 20 years. Some of them have been employed in this same concern 15, 20, or 25 years.

They have some difficulty with the management. Cost of living has gone up, or there has been some difficulty in working conditions, any one of many things. They go on strike. The management goes out and gets replacements for the strikers. This union that was out on strike was the collective-bargaining agent prior to the strike.

Mr. SANDERS. Under the National Labor Relations Act?

Senator HUMPHREY. Yes. Then the Taft-Hartley Act provides that the group of workers that come on in, at least by interpretation of the act, can be designated by the employer as the bargaining agent calling for an election, and the people who are on the outside who have grown up with this plant, let us say, are just all at once left out here in the cold, have no economic rights, and cannot vote in the election. Do you think that is fair?

Mr. SANDERS. That is part of the background that we had in mind when we said that the employer should not be allowed to abuse the calling of elections. I think that the conditions under which you have laid down would be unfair and the labor laws should straighten that out some way.

Please understand me to not pose as an expert on this law, however.

Senator HUMPHREY. I am happy that you are are not, Mr. Sanders. I am sure that you are a fair-minded man. Really I am very sincere about this. I just give you the kind of cases that have been brought to my attention.

I am no expert on it either, and yet I think I have had more to do with the settling of some labor disputes than a lot of experts have.

Mr. SANDERS. Senator, you have a great deal more responsibility than I do. I thank heavens for that.

Senator HUMPHREY. We are appreciative of your advice and counsel. It is thoughtful and it is constructive.

Here is an act that literally prohibits these men who now find themselves on the outside from any further say. Let us assume that they did have a legitimate right to strike. I do not believe that people just like to strike for the fun of striking. It is rather an expensive idea. Yet they are prohibited from even having the right to vote in the selection of a bargaining agent. Does that strike you, as a fellow-American, as being fair play?

Mr. SANDERS. No. I repeat again, I do not believe that if the bargaining union is on strike, is not breaking any of the laws, is not committing any unfair-labor practices or is meeting all of the requirements of the law, that it should be possible in the short time to rush in a lot of laborers, create another union that has a larger voting power than the union that is on strike under strictly legal and possibly unfair terms, and destroy the bargaining unit which was a sound equitable democratic union to begin with.

Senator HUMPHREY. So that provision, we would say, could be amended in the act. That could be looked into.

Mr. SANDERS. If there are such abuses in the act, they should certainly be corrected.

Senator HUMPHREY. Now our colleague, who is not with us this morning, Senator Morse of Oregon, is considered to be, and I surely believe him to be, a very able lawyer. He is dean of the law school



out at Oregon University, and he has been very concerned about the powers of the general counsel under the Taft-Hartley Act.

Senator NEELY. There are others who are also concerned.

Senator HUMPHREY. And the distinguished Senator from West Virginia is very much disturbed about not only the power of the general counsel, but he and I are disturbed about the general counsel.

Now I have been very, very much interested in what Senator Morse has had to say about the legal powers of the general counsel. Are you familiar with the relationship of the general counsel to the National Labor Relations Board and the powers that he has under the act?

Mr. SANDERS. Only in a vague way, Senator. I think any answers that I might give on details like that would not be very useful.

Senator HUMPHREY. Do you think anybody ever attended the National Grange convention and really gave what I was going to call an exposé, but that is a weighted word, but ever gave an explanation of the powers of the general counsel under the National Labor Relations Act of 1947?

Mr. SANDERS. No, and I am sure the Grange members feel as I do. The delegate body feels as I do that they cannot be experts. All they are attempting to do here is to set down a group of fundamental principles that they hope will be incorporated in the labor law.

Senator HUMPHREY. Yes.

Mr. SANDERS. And of course we cannot pose, we cannot be of great assistance in such details as to whether the general counsel is functioning properly, whether it is the best legal set-up that can be found. However, I might say there is one thing I did not get an opportunity to read about in my testimony and that is we do feel that the Conciliation and Mediation Service—

Senator HUMPHREY. Yes, I got your statement on that.

Mr. SANDERS. The Conciliation and Mediation Board should be outside the Department of Labor.

Senator HUMPHREY. Yes.

Mr. SANDERS. We feel that it is just as logical to put it over in Commerce as to put it in the Labor Department.

Senator HUMPHREY. I am glad to get your point of view on that because that is one of the debated portions of the bill, of the old Taft-Hartley bill and of the new Thomas bill. I think that we are open-minded here on these issues, and it is good to have your testimony.

Here is one item that gives me concern. When I have finished this point, I shall conclude my interrogation.

I quote No. 5 on page 2:

The National Grange, at its November session, took the following action relative to the subject now before your committee:

"We believe the enactment of the Taft-Hartley Act has had a corrective effect on labor and management disputes."

I appreciate what you said afterward.

"We favor such modifications in the act as may be necessary to correct abuses or weaknesses that are known to exist."

I know that that is a good protective statement, because as you say, you did not pose to be experts, but I would like to ask you one question in reference to this: Has any single so-called unbiased—if there are any of those people left in the world—has any single relatively objective informed person appeared before the National Grange conven-

tion or your respective National Grange meetings in States and localities to go into detail, not only on the law, the letter of the law of the Taft-Hartley Act, but also into its application?

MR. SANDERS. I am sure that no such effort has been made on the part of labor.

Senator HUMPHREY. On the part of anyone, let us say.

MR. SANDERS. No, no one. I do not think that the Grange would permit an extensive analysis either by employer or labor to be presented to its conventions. That is the reason why we passed a resolution of this kind in such a complex field.

We do feel keenly, very keenly, that this is highly important for agriculture, and we do have well-defined ideas as to what should be done in principle, but when it comes to details, we just simply cannot help the committee much.

Senator HUMPHREY. Well, I want to say that your three guideposts on page 4 sound wonderful to me:

All prosperity springs from the production of wealth; or anything which retards the production of wealth is unsound.

That is a very sound principle.

2. The compensation of each should be based on what he contributes to the general welfare.

That, it seems to me, is very good. In other words, if someone made a million dollars on the stock market, he did not contribute very much to what I call the general welfare.

3. The primary purpose of Government is to protect its citizens from aggression, both physical and economic.

Those are the guideposts of the National Grange.

I want to say in view of the controversial nature of the Taft-Hartley legislation, I am a little bit disturbed about the fact that you pass a resolution wherein you feel that it has had a corrective effect on labor-management disputes, and yet there has not been any objective or comprehensive analysis of the legislation and its effects.

For example, I would not want to have, let us say, a group of people who represented the fishing industry of America appear before the National Association of Retail Druggists and say "We believe that the ethical standards of the pharmaceutical profession are sound," or "they are unsound." They may have read something to the effect in the newspapers. Someone is always kidding druggists, for example, for having in their drug stores everything except prescriptions. I do not think an organization would be in a position to make a judgment unless some one were available to go in, and go over with them in detail what really were the ethical professional standards of the pharmaceutical profession and not only what the standards were, but how they were applied.

Now that is what I am talking about. Here is a great law that affects millions of people in America. It affects a great area of our life—labor and management—I think the most vital area that we have to think about. And a very wonderful responsible organization passes a resolution that sort of puts a stamp of approval on it. You know I kind of think before you put a stamp of approval on something, whether it happens to be a new automobile, a new prefabricated home, a piece of legislation or an individual, that there ought to be a reasonably comprehensive analysis made of the individual or program.

Mr. SANDERS. Senator, I am glad you asked that question because I want to clarify for the record the fact that the National Grange has access to one of the most serviceable agencies, I think, of any farm organization, and possibly any national organization. The Potomac Grange here in Washington was the first unit of the Grange organized.

Senator HUMPHREY. Yes, sir. George Washington was a member, was he not?

Mr. SANDERS. No; George did not live then, but the Potomac Grange organization has study groups, and we go anywhere in Washington, we can find talent to serve on those study groups that will serve on them.

Now this past year we set up a labor-study group and in all of our studies we had about 50 to 60 people on them last year. One of the groups was a group studying labor. We did not have enough time to bring in all of the labor representatives we desired. Therefore I will not claim a great deal of labor's viewpoint in our report, but I have spent more time on studying the Taft-Hartley law since I joined the Grange about 2 years ago, I would say three times as much time as I have on agricultural laws, because I have worried a great deal about whether or not we were doing the right thing.

Senator HUMPHREY. Well, I appreciate your real serious concern.

Mr. SANDERS. We have studied a great deal about doing the right thing in connection with this particular law.

Senator HUMPHREY. Well, I think you have protected yourself pretty well.

Mr. SANDERS. We have not gone into it very recklessly, I will tell you that. We tried to study it. We do know that we cannot be experts on the details of the law, and the operation of the National Labor Relations Board.

Senator HUMPHREY. You know a law is only as good as it is administered, and all types of legal structure are affected by its administration, and vice versa.

Administration is affected by the type of legal structure. Now here are the powers of the general counsel. There is one glaring failure in this law, or one glaring abuse that has come to my attention, and I will just be as frank with you as I can.

I have learned more about the powers of the general counsel, the opportunities for abusive use of those powers, since I have been a member of this committee than I have ever learned before, and I want to tell you that I had two research people working with me for 9 months whom I had to pay, and they were supposed to be competent men, and I had members of the staff of a great university visiting me on labor legislation in a rather difficult campaign wherein my opponent was a very well-informed man.

I have great respect for his intelligence and his ability, and I have learned more on this committee by the interrogation and the presentation of testimony than I ever learned out of all the people that got around me to inform me and to bring me up to date, and I was supposed to know a little something about it anyhow. I used to teach a little of this.

Here we find the general counsel. Now I recall that you have said here in your testimony that you were not just too familiar with the powers of the general counsel, and I agree it is a little difficult to find



where the power exists. What is in the law is one thing and what he does is still another thing.

Now it seems to me that before we put the stamp of approval on, that a very, very careful examination of that situation ought to be made. I know the general public.

The great propaganda barrage has been brought out here. One group says it is a slave law, using all the adjectives they can. Another group over here says it has done great things. The members of this committee are trying to dig their way through this propaganda to find out what is really right.

Now I will say very candidly that if I were to make my judgment only from what I read in the newspapers about the Taft-Hartley law, I would be a raving advocate for it. I remember when we had Mr. William Davis here before this committee, a man whom I have held in highest esteem for as long as I can remember, because he was very active in the days when I was just getting my opportunity for the first vote. He did not call anybody any names, we did not have any blows around here, and he was very reasonable in his testimony, he was factual, he was philosophical, he exhibited information and understanding. He got a couple of fairly good paragraphs, fairly good paragraphs of newspaper covering. Yet that is the kind of testimony that ought to go on out all over America.

Senator PEPPER. Will the Senator yield at this point?

Senator HUMPHREY. Yes, sir.

Senator PEPPER. Did the Senator see how much Mr. Feinsinger got, the professor at the University of Wisconsin, how many paragraphs he got in the report of his testimony here?

Senator HUMPHREY. I read one newspaper from the city of New York. I see that he did not get too much. I know Mr. Feinsinger. I know of his splendid work with the Honeywell Co. in the city of Minneapolis. I know of the great confidence they have in him, and I consider him to be an eminent authority.

Now those are the men to listen to. I do not even believe we should necessarily listen to one side or the other to be fairly objective about it. I would like to read what Mr. Davis, Mr. Feinsinger, Mr. Leiserson have to say, people who have made it their profession, their lives to be as fair, objective, and professional as they can in the understanding of these so complex and intricate problems.

You said you were glad you were out there and were not up here.

Mr. SANDERS. Yes, sir.

Senator HUMPHREY. Sometimes I think you are right.

Mr. SANDERS. I said I am glad I do not have your responsibility in this case.

Senator HUMPHREY. All I want to say in this case—

Mr. SANDERS. I think I would rather be up there where you are than down here, though, Senator.

Senator HUMPHREY. I am going to send you a copy of the testimony of these men, and I want you to look it over. I know the men in the Grange in my State. I have talked to them and I addressed their State convention. I know they are fair-minded people.

If they get this information and it is clear and understandable, they will make a fair decision. I have been concerned over this, because of the respect I have had for the high standards of your group. There is no group in America that I would rather have to be in support of



constructive labor programs after a real study, after a real objective analysis, than the National Grange. In fact, I am going to look forward to the day that I can come to you and we can sit down and talk about these things much more extensively than we have done here.

Mr. SANDERS. Senator, you know that a person in our organization could not be ungrateful for such complimentary remarks as you have given us.

Senator HUMPHREY. I have said it sincerely. But I want you to remember what we have said. The powers of the general counsel. The injunction. There are certain mandatory unfair labor practices which apply to labor, but no such practices which apply to employers, and a mandatory practice means an unfair labor practice where it is mandatory for the general counsel to act. It means that that complaint must go to the top of the list, complaints on the employers' side, that is.

It just does not seem to me that that is fair. There is another thing that did not seem to me was very fair when we consider your Grange's record against monopoly and against bigness and abusiveness—I have heard Senator Pepper, I believe, go through the requirements of this law upon unions. Now there is not anybody that is a saint, you know. I mean if you dig into the closet far enough on any organization, any individual, I am sure there will be adequate reason for proper concession.

I noticed here that there is a requirement in this law—I am going to find this portion here—which says under section 9, paragraph (f), it is necessary to file with the Secretary of Labor the name of the labor organization, the address of its principal place of business, the names and titles and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeds \$5,000, and the amount of compensation and allowances paid to each such officer or agent during such year.

It goes on down and asks for the initiation fee or fees which new members are required to pay on becoming members of such labor organization, the dues or fees they are required to pay, a detailed statement of or reference to provisions of its constitution and by-laws showing the procedure followed with respect to qualification for or restrictions on membership, election of officers, and stewards, calling of regular and special meetings, levying of assessments, imposition of fines, authorization for bargaining demands, ratification of contract terms, authorization for strikes, authorization for disbursement of union funds.

It goes down here about a page and a half. Now, I do not think that that is necessary, and I do not think it is desirable, but let us assume here for the purposes of argument that it is desirable. The title of this act is "To amend the National Labor Relations Act"—it is under the National Labor Relations Act. It deals with labor-management policy.

Now, if you are going to ask every bargaining unit that seeks the services of the National Labor Relations Board to make this detailed statement as to its rights, its duties, its obligations, its laws, its fees, its officers, I want to ask you: Do you think it would be fair, since it is a two-sided sword—this coin has two faces on it, one labor, one

management—you not think it ought to be required of the other side, too?

Mr. SANDERS. In answer to that I would say that these data are filed with the Labor Department.

Senator HUMPHREY. Yes.

Mr. SANDERS. They are not for the general public.

Senator HUMPHREY. But they are available for public use.

Mr. SANDERS. For anybody?

Senator HUMPHREY. Oh, absolutely.

Mr. SANDERS. Well, I would say that they should be made confidential for judging the disputes and should not be extensively published in public unless we are going to require a similar statement if it is needed in labor disputes from industry, and industry probably would be very vociferous in opposition to such a requirement.

I cannot see, if these were made confidential, where the purpose of them would be in any way antagonistic to labor and where they should oppose them so much, but I doubt very much whether they should be paraded to the general public's view.

Senator HUMPHREY. It just seems to me this was one of the little things that weights it another way. Now, National Grange members belong to cooperatives, do they not?

Mr. SANDERS. Yes—well, not so very much. We promote cooperatives, but we do not have a great many cooperatives that are auxiliaries of the Grange.

Senator HUMPHREY. I mean individual members.

Mr. SANDERS. Yes.

Senator HUMPHREY. I believe in farm cooperatives. I think they have done great things for our country and for the agricultural economy, but I do not believe that a farm cooperative should have to be under the microscope of the Government or of the statute as to every bit of its operation or as to each and every one of its members.

Senator AIKEN. Mr. Chairman, may I simply state that about 3 years ago a law was passed requiring a report which could go under the microscope to be made to the Bureau of Internal Revenue.

Senator HUMPHREY. Financial report.

Senator AIKEN. And fraternal organizations are also required to do the same.

Senator HUMPHREY. A financial report?

Senator AIKEN. No, a complete report of their affairs in general. I agree with the Senator that can be carried too far altogether, and I think corporations have to report to the SEC, as I recall it somewhere, but they should not be made public.

Labor's affairs should not be made public, although most of the unions do issue financial reports and are willing to have them made public. I think a few of the large ones very conspicuously do not do that.

Senator HUMPHREY. Now, for example, it is necessary for a corporation to file with the Securities and Exchange Commission if it has a new stock issue coming out or something; is that not correct?

Senator AIKEN. That is right.

Senator HUMPHREY. But it is not denied, if it does not do it, the protection of the courts of this country; is it?

Senator AIKEN. Not that I know of. What I was bringing out is that everybody gets regimented in some way.

Senator HUMPHREY. Surely they do, and there has to be a reasonable amount of what we call care for the public interest or protection of the public interest.

All I am saying is, on this kind of a law we ought not to weigh this thing as being just a labor law. This is a labor-management law, and if we are going to draw up the specifications in a law pertaining to labor-management, then it ought to be a two-sided coin.

Mr. SANDERS. It ought to be balanced.

Senator SMITH. Will the Senator yield for an observation?

Senator HUMPHREY. I yield.

Senator SMITH. I recall the debates when this question was up. This was put in entirely to protect the workers because it was felt if they had the union shop, as the witness pointed out, this would be some way to protect the workers against excessive initiation fees, and so on, and protect the worker so he could get at facts.

The information to go to the Secretary of Labor was understood to be entirely secret, confidential to the Secretary of Labor so he could protect the workers. I want to make that clear, because the argument is being made here that that was a management proposal. It was not at all. It was to protect the worker and his membership in the union and for no other purpose. I can state that as a member of the committee debating this 2 years ago.

Senator HUMPHREY. If the union does not do this, the individual worker gets no protection under the NLRB.

Senator SMITH. If the union does not do this, they are not qualified to bargain.

Senator DOUGLAS. Senator Aiken, is the same sanction imposed against cooperatives who fail to file, that is, are they denied the protection of what otherwise would be the law if they failed to file?

Senator AIKEN. I suppose they would be subject to the same penalties as anyone who is required to report to the Bureau of Internal Revenue.

But the penalty would be upon the individual, not the members of the organization? I do not know about that. I would expect it to be on the organization itself.

Mr. SANDERS. I think, Senator Aiken, that if they failed to file this report, they would not get the tax exemption which it provides.

Senator AIKEN. They would be subject to double taxation.

Mr. SANDERS. That is right; they would be if they did not file the report, and, therefore, they would be punished by not filing their report.

Senator HUMPHREY. As I said to you here, it seems to me it is important that an organization does make an exhaustive study. Since you are not reporting just for yourself but for the organization as to the merits of the law, I am convinced from the testimony this morning that an exhaustive study has not been made; is that not correct?

Mr. SANDERS. Well, an exhaustive study, Senator, has been made on the fundamental principles. We tried to test every provision in the law on this fundamental principle: Does it promote steadiness of employment. We do not mean by that, that we are interested only in labor keeping a job at slave wages, but we believe that with steadiness of employment labor unions are best able to bargain for increased wages.



Senator HUMPHREY. I agree with you that stability of employment helps in bargaining for increased wages.

Mr. SANDERS. I don't want to leave the impression with this committee that we have just jumped in here and said something without spending long, sleepless nights—I have—of course, I don't mean the Grange has—but I have worried more about this testimony than all other testimony combined, because I felt—

Senator HUMPHREY. You have done a good job.

Mr. SANDERS. The keen responsibility that this particular piece of testimony brought to me as legislative counsel of the Grange.

Senator HUMPHREY. I am going to have Senator Morse send you some material on the powers of the general counsel and I want you, if you will be so kind, at some later date, because of my respect for you, to let me know whether or not you think any one man ought to have those powers in a great area of labor-management relationships.

I think you and I have agreed that on the use of the injunction—I don't agree to its use, but if there is to be a use of the injunction, there should be some quick means of resolving the dispute.

The Taft-Hartley Act does not provide that. I am sure you would feel with me that there are unfair labor practices and if the general counsel must by law be compelled to take action against one side, mandatory action, in other words, then it ought to be on the other side, too, should it not?

Mr. SANDERS. Of course, the injunction is used to stop a strike, and the employer is not striking and the only way—

Senator HUMPHREY. He can strike. He can have a lock-out.

Mr. SANDERS. That would be illegal.

Senator HUMPHREY. A lock-out is illegal under the Taft-Hartley Act, but it is not mandatory upon the general counsel to step in immediately and get an injunction.

Mr. SANDERS. Possibly it should be, then.

Senator HUMPHREY. There are a lot of things in this Taft-Hartley Act that ought to be corrected, as you say in your statement:

We favor such modifications in the act as may be necessary to correct abuses or weaknesses that are shown to exist.

And there are quite a few abuses and weaknesses that are apparently shown to exist.

Mr. SANDERS. We feel reasonably sure this committee has the resources and the personnel on it that can dig those revisions out in detail far better than we can. Of course, we are always willing to help in any way possible, but we know we cannot help in general detail on this law.

Senator HUMPHREY. I just want to ask this: Have we found some abuses and weaknesses? I have tried to be very factual and very honest with you in my analysis here this morning as to what I consider to be from the testimony thus far some of the abuses and weaknesses. I am sure I am being extremely factual when I tell you about the abuses of the powers of the general counsel.

I am sure that there are a number of members of the committee who feel as I do. Do you feel they should be corrected, if I am correct?

Mr. SANDERS. If you are correct, certainly.

Senator HUMPHREY. If I am correct on that and the use of the injunction over such extended periods of time, if I am correct in my statement, do you think that ought to be corrected?



Mr. SANDERS. Indeed, if it is an abuse and a weakness and it exists, of course, it should be corrected, and we would be favorable to correcting it; but we want to leave the empression that we do not want the provisions in this law that do help to settle disputes and, therefore, keep the production moving as much as possible, we do not want those things thrown out by just simply repealing the whole law and then run the risk of being able to get those put back in the law by amendment to the reenacted Wagner Act.

Senator HUMPHREY. Have you read S. 249?

Mr. SANDERS. I have read it, but I haven't been able to study it as much as I probably should.

Senator HUMPHREY. This does have machinery established for the correction of certain types of secondary boycotts and jurisdictional disputes. I think we are all concerned about the language that pertains to national emergencies.

Mr. SANDERS. I don't believe the national emergencies are adequately dealt with there because, if you could find the place where they are dealt with—

Senator HUMPHREY. I can find the place where they are dealt with, and one of the things that it provides in here is for a fact-finding board with powers of recommendation. Do you approve of that?

Mr. SANDERS. I stand corrected. I would approve of any kind of machinery that would set up a fact-finding commission that would operate quickly and facilitate a settlement, yes. I don't know whether that is the best way of getting all the facts or not. I am not sure of that.

Senator HUMPHREY. Can you name any case where the Taft-Hartley Act emergency provisions have ever settled a labor dispute?

Mr. SANDERS. You have asked me a question—

Senator HUMPHREY. Can anybody on the committee name me a case where the Taft-Hartley provisions have settled a dispute?

Senator SMITH. We can say the President used the Taft-Hartley Act seven different times in critical emergencies.

Senator HUMPHREY. He used the injunction, but it didn't settle it, it restrained it.

Senator SMITH. It doesn't call for a settlement. If the President can't bring it about by that process, he reports it to Congress.

Senator HUMPHREY. Prior to the Taft-Hartley Act we still had strong unions, went through a great war, and during the tremendous days we had during the Wagner Act, we weren't besieged by these great national emergencies all the time.

Senator SMITH. The President of the United States wanted to put the workers into the Army.

Senator HUMPHREY. I opposed it.

Senator SMITH. I did also and so did Senator Taft. We were opposed to it.

Senator DONNELL. May I place in the record one sentence from the majority report of the Joint Committee on Labor-Management Relations? Under the heading of injunctions under section 208, national emergencies, it reads:

Injunctions have been sought by the Attorney General at the direction of the President in six instances and in each instance the injunction was granted.

Senator HUMPHREY. That is right, and that is simply a matter of the law, but the point is that the dispute was not settled, and the purpose of this law was to promote equitable relationships. It says here:

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Senator DONNELL. National emergency section 208 was contemplated to apply in and give relief in cases in which the court finds that if permitted to occur or to continue the strike or lock-out will imperil the national health or safety, and in these various cases, six of which have been filed under that section, the court has granted the injunction and national safety has been preserved. It can be only an 80-day injunction.

Senator AIKEN. Before I would undertake to answer the question of the Senator from Minnesota as to how many strikes had been settled by the Taft-Hartley Act, I would have to have the Senator from Minnesota furnish me with the information as to the number of strikes which would have occurred had the Taft-Hartley Act not been in effect because, of course, the best settlement is one which is effected before the strike is called.

Senator HUMPHREY. That is right.

Senator AIKEN. If the Senator from Minnesota will furnish me with that information as to how many strikes there would have been had the Taft-Hartley Act not been in effect, then I would try to work out an answer to his question.

Senator HUMPHREY. Of course, that is impossible to furnish. I can say that the International Typographical Union strike, which was not, of course, a national emergency, would not have occurred; because it was directly caused by the prohibition against the closed shop.

The United Mine Workers' strike, which was a matter of negotiation over the welfare fund and how it was to be handled, possibly wouldn't have occurred. Those are two I can think of offhand.

Senator AIKEN. Of course, the best settlement of any strike is the settlement effected before any strike is called.

Senator HUMPHREY. That is right, and that is something that ought to go clearly into the record, that the vast majority of labor-management difficulties are settled amicably around the conference table in the process of collective bargaining.

I would like to say just this: I think it ought to be quite clear that the income of farmers and workers in this country, according to the Bureau of Agricultural Economics and the Bureau of Labor Statistics, has almost paralleled. It has gone up and down together. There has been a direct relationship between the two.

Mr. SANDERS. If you are talking about net income, that is not the case, but if you are talking about prices received, there is a considerable relationship there, but you see, the costs of agriculture do not fluctuate as do the prices received.

The net income fluctuates very much more in agriculture than it does with wage workers. That really holds true, when only the total wage bill paid is considered and not the wage rate.

Senator HUMPHREY. Total wage, the aggregate income.

Mr. SANDERS. Yes; that is right.

Senator HUMPHREY. That is all, sir.

The CHAIRMAN. Senator Pepper.

Senator PEPPER. Mr. Sanders, Senator Humphrey the other day, last Thursday, I believe, in quoting from an article purporting to sketch the legislative activities from 1933 to 1941 by the National Association of Manufacturers before the Congress said the following [reading from p. 3995 of the transcript]:

It opposed the Securities and Exchange Act, the Reciprocal Trade Agreements Act, the National Labor Relations Act, the Agricultural Price Parity Act.

Do you know whether or not this article that Senator Humphrey quoted is correct, in saying that the NAM opposed the Agricultural Price Parity Act?

Mr. SANDERS. I do not know the details of it; no, sir. I couldn't say either whether the National Association of Manufacturers did oppose the—what act was that, 1938?

Senator PEPPER. Agricultural Price Parity Act, it is called here, between 1933 and 1945. I suppose it is the act under which certain commodities get Government support.

Mr. SANDERS. We had a great deal of opposition, Senator, during that time, not only coming from the National Association of Manufacturers but others. We had some farm bills that were vetoed even.

Senator PEPPER. I know that, but the reason I am asking is as a preface to the next question. Mr. William Green, president of the American Federation of Labor, testified here that organized labor had always tried to cooperate with and assist the farmer, and that labor had supported farm price legislation for agriculture. I was wondering if you could tell us whether Mr. Green was stating the fact or not when he made that statement.

Mr. SANDERS. I believe in general that labor organizations have supported the farm bills. I don't know whether that will hold true in great detail, but I think in general we have felt that they have been favorable to farm legislation.

Senator PEPPER. Senator Hill has been pointing out here by inquiry and Senator Humphrey has suggested you do feel that the welfare of the farmers and the workers of this country are related?

Mr. SANDERS. Most certainly; yes, sir.

Senator PEPPER. Mr. Sanders, are you an attorney?

Mr. SANDERS. No; I am an economist.

Senator PEPPER. You are legislative counsel for the National Grange?

Mr. SANDERS. That is right.

Senator PEPPER. I wanted to be among those to tell you that I think all these farm organizations—and there is none better than the National Grange—are doing a great service to agriculture and to the country, and I don't know of any instance where I think they haven't with reasonable fidelity tried to support the farm program, but as to the comparison between agriculture and what we might call organized workers—now, for example, you have in the National Grange how many members?



Mr. SANDERS. Our membership consists of dues-paying members and superannuated members. We don't know how many superannuated members we have living and active, but we have 825,000 members, approximately, individually paying dues. We do not have group payment of dues. Every person pays his individual dues.

Senator PEPPER. How do you describe the legal nature and character of that organization? Is it what you would call an unincorporated association?

Mr. SANDERS. I don't believe it is incorporated. It is not a corporate organization.

Senator PEPPER. It is not a corporate organization?

Mr. SANDERS. It is a fraternal organization.

Senator PEPPER. It is a voluntary association of citizens who are interested in the welfare of agriculture?

Mr. SANDERS. Yes, sir.

Senator PEPPER. Aren't labor organizations essentially the same in character?

Mr. SANDERS. Yes; I would say the motives behind the Grange are first, primarily looking after the welfare of its membership and, second, agriculture in general, and I think that in the main is the principal motive for labor unions.

Senator PEPPER. Would you think it fair to deal with the National Grange and the other farm organizations as if they were corporations or to regard them as corporations, treat them as corporations?

Mr. SANDERS. I think that the farm organizations, if they undertook to establish any monopolistic control—for example, suppose farmers—it is not possible at all because of the nature of the business—but suppose we were able to establish a farm organization that was sufficiently strong to really stop producing food so that we could restrict our food production as nonagricultural output was restricted in the thirties, which was about half—I mean, the total production of nonagricultural goods went down to about 42 percent, I think—that, of course, would practically starve the Nation.

I think if agriculture could organize and would undertake to do that, they should be controlled and should be completely put under some law that would prevent such operations.

Senator PEPPER. Maybe they should be subjected to certain controls, but the question was, Do you think that a farm organization should be treated and regarded as a corporation?

Mr. SANDERS. In what way, treated in what way?

Senator PEPPER. For example, have its internal structure regulated the way corporate structures are regulated, subjected to suits the way corporations are subject to suits and, for example, regulated with respect to political expenditures the same way that corporations are?

Let me get down to specific facts. At the present time is there any law that you know of that requires the National Grange to make reports to the Secretary of Agriculture, the Secretary of the Treasury, the Internal Revenue Bureau or any other Federal agency?

Mr. SANDERS. On our political expenditures?

Senator PEPPER. Political expenditures or dues or expenditures in the interest of agriculture for the members of your organization.

Mr. SANDERS. I don't know of any such law, but I believe we are so innocent that nobody in the Grange would object to such a report



because—for example, on our political expenditures, I am sure we would be glad to make a statement of that because it is a zero.

Senator AIKEN. Will the Senator yield?

Senator PEPPER. Yes.

Senator AIKEN. I simply want to point out that business organizations of the farm organizations are incorporated usually. I don't know that they all are, but they usually are.

Mr. SANDERS. We have some insurance companies that are definitely incorporated and must make certain required reports.

Senator PEPPER. Yes. When we start out on the hypothesis that the National Association of Manufacturers—I use them as an association of employers—so far as I know, they are not required to file any expense accounts, file any of these reports that labor is required to file, and so far as I know, there is no prohibition against the NAM making political expenditures.

Mr. SANDERS. Individual members, of course, do, with the internal revenue.

Senator PEPPER. And so do individual workers, and then you are telling me now that that would be a voluntary association of citizens. Now you are telling me that the National Grange is a very fine, creditable, patriotic organization of citizens, of course, and yet you don't have any instance where Federal law puts any prohibition against their endorsing anybody in a farm paper. Do you all publish newspapers?

Mr. SANDERS. Yes, sir.

Senator PEPPER. Do you ever say anything in there that looks like an endorsement for candidates or political parties or commends them for their aid to agriculture or speaks disparagingly of them because they haven't been friends of agriculture?

Senator SMITH. Will the Senator yield for an observation?

Senator PEPPER. Yes.

Senator SMITH. I don't understand that the Grange has any control over the farmer's right to work. The closed shop has, and that is the reason for the proviso to protect the worker.

Mr. SANDERS. There is no effort on the part of the Grange to enter into concerted action to restrict output or to do anything of that kind that would directly benefit our membership.

Senator PEPPER. We will get to that in a minute, Mr. Sanders, but I wanted to know if the law forbade the Grange in any newspapers that it publishes from commending any political party as a friend of agriculture or commending any candidate for office as a friend of agriculture.

Mr. SANDERS. No, sir; and we are not in favor of that in connection with the Taft-Hartley law. We believe that is a definite mistake in the law to try to control the publications of labor with regard to political statements.

Senator AIKEN. Will the Senator yield?

Senator PEPPER. Yes.

Senator AIKEN. However, I would like to have the record show that the Grange never does endorse candidates or parties.

Mr. SANDERS. We never do.

Senator PEPPER. I don't mean necessarily in the political sense, but do you mention the good record of men like Senator Aiken, who has done a lot for agriculture?

Mr. SANDERS. I am sorry to say, I don't believe we have published any of the good record of Senator Aiken.

Senator PEPPER. He deserves it.

Senator AIKEN. They lean over backward to keep away from that.

Mr. SANDERS. We do not expend any money whatever for that, Senator Pepper, and I have specific instructions to never write out to the masters and ask them to write in here and tell congressional committees to do so and so and stand up for certain things. We simply do not engage in that sort of practice.

Senator PEPPER. Is there any Federal law with respect to fees that the National Grange may charge the members?

Mr. SANDERS. No.

Senator PEPPER. Is the Secretary of Agriculture given authority to see to it that they are not excessive?

Mr. SANDERS. No. I think we would be glad to have an excessive-fee law. We wouldn't have any objection because we would come way below it.

Senator PEPPER. No Federal laws on the subject at this time. Now is there any Federal law laying down as unfair practices anything that the National Grange may do with respect to its fellow members or with respect to the buyers to whom they sell or the sellers from whom they buy?

Mr. SANDERS. No, Senator, but I think, if you will pardon me, the comparison is not applicable in this situation.

Senator PEPPER. That is a matter of conclusion. I just want to get the facts, Mr. Sanders. I am not the jury, I just want to get the facts.

Now, then, is there any Federal law subjecting the National Grange to lawsuits in Federal courts where there is not a diversity of citizenship and where the amount involved is not \$3,000, and subjecting to seizure the funds of the National Grange that might happen to be in the treasury?

Mr. SANDERS. I would be inclined to believe the Grange could be sued for any amount.

Senator PEPPER. Is there any Federal law that provides for those suits in the Federal courts?

Mr. SANDERS. I know of no such laws.

Senator PEPPER. During the depression days did you feel that the cost of farm implements which farmers had to buy from manufacturers declined as much as did farm prices?

Mr. SANDERS. The facts indicate they did not, of course.

Senator PEPPER. To what do you attribute that?

Mr. SANDERS. Well, to the stickiness of costs of industrial concerns, both the wages paid and the cost of materials and to the general lag of nonagricultural prices compared with agricultural prices.

Senator PEPPER. Would that be attributable to the small number of corporations that manufacture farm implements and their ability to hold up prices because there were just a few sellers as compared to the inability of the millions of farmers to hold up farm prices by any kind of cooperation?

Mr. SANDERS. There was a certain amount of that, but I think you would have had stickiness even regardless of the number of agricultural implement manufacturers, but probably not as much as did exist?

Senator PEPPER. How many farmers are there in the country?

Mr. SANDERS. Six million.

Senator PEPPER. How many farm implement manufacturers are there?

Mr. SANDERS. There are about four I believe that manufacture 85 percent of all farm implements.

Senator PEPPER. Now, then, do you regard the farmers of the country as being sufficiently organized without Government help to maintain a fair level of farm prices?

Mr. SANDERS. No; and I don't think they can be so organized either. I don't think they could be so organized under any conceivable system.

Senator PEPPER. As a result of the inability of the farmers to organize effectively because of the large numbers and other factors to hold up farm prices, do you think that has had anything to do with the necessity of the Government coming in and giving supports to farm prices?

Mr. SANDERS. Yes, indeed. Now, the nature of the farm business which I described, I believe, before you came in, Senator, makes it impossible to organize or even for the Government to control and reduce greatly the output of agriculture.

Senator PEPPER. Could you give me an idea about how much the Federal Government is expected to expend this year in giving support prices to agriculture, basic agricultural commodities?

Mr. SANDERS. If you can tell me how much potato prices are going down and wheat prices, I could make an estimate.

Senator PEPPER. Because you don't know how much they will go down, you can't say?

Mr. SANDERS. No.

Senator PEPPER. Suppose I were to say that a very eminent authority in the field of agriculture has estimated that the Federal Government this year might have to expend  $4\frac{3}{4}$  billion dollars to maintain parity prices for part of the basic farm prices of this country, would that strike you as being very far wrong or an unreasonable estimate?

Mr. SANDERS. In the first place, they will not maintain parity. They will maintain only a percentage of parity.

Senator PEPPER. Even the percentage of parity; that the Federal Government might be expected this year to spend  $4\frac{3}{4}$  billion dollars, would that figure be reasonable?

Mr. SANDERS. I don't think it would be unreasonable. It may even be more.

Senator PEPPER. It may even be more than that. Do you know of any subsidy this year that the Federal Government is giving to the wage earners of the country who engage in industry who are not getting wages comparable to the cost of living?

Mr. SANDERS. We have a minimum wage law.

Senator PEPPER. That is 40 cents an hour.

Mr. SANDERS. Congress is trying to make it \$1 an hour.

Senator PEPPER. We haven't succeeded in the Congress or even in this committee.

Mr. SANDERS. But that is an effort to hold a floor under wages. That does answer your question.

Senator PEPPER. Forty cents an hour. That is simply a legal requirement that in that minimum level or stratum that management

pay that minimum wage, but the Federal Government doesn't pay out the difference between those who get less than 40 cents an hour and those who do, does it?

Mr. SANDERS. No, indeed.

Senator PEPPER. What I am getting at is this, and I want to be clearly understood, not in criticism because I will vote for every dime of that—as a matter of fact, I would approach even nearer 100 percent parity for agriculture but, nevertheless, I think when we are talking about unincorporated associations and we are talking about one great segment of our people, it is only fair to make a comparison and it may be—this is a conclusion, I don't necessarily have to draw it, that is the jury, the Congress, and the country—it may be that if agriculture were stronger, were more tightly organized, and could control its commodities better itself, that they could force fair prices and that the Government might not have to pay our  $4\frac{3}{4}$  billion dollars a year.

Before you answer, let me say this: In Florida today we are struggling to encourage the citrus growers of out State to get together in a voluntary organization called the Florida Citrus Mutual. We feel some of the other citrus States, especially California, have found a way to organize and to control their output and where their commodities are shipped into the markets, and in that way to get better prices for their products than we get for ours, because we have three or four hundred shippers competing with one another, sending our fruit into the Nation's markets.

Rather than the State's controlling this industry or the Federal Government's controlling it, some of us are urging our growers to get together in a growers' organization where at least 75 percent of the product of the State will be under the control of the growers. Now, many of us think the alternative to that, if it doesn't work, is to come to the United States Government and ask it to give us farm support, give us Federal money in order to keep our growers from going bankrupt.

Isn't there some possible public interest in workers who have their labor to sell and farmers who have their commodities to sell cooperating so that they may exert economic pressure to get a fair price for what they have to sell?

Mr. SANDERS. Senator, you will recall that we supported a bill which you were supporting on marketing agreements for citrus fruits last year, and I assure you we will support it again this year. We think that is comparable to what you are trying to bring out, if I understand your set of questions, with respect to labor. We believe that it is right, it is just to promote strong labor unions by requiring that employers must bargain with them in good faith, that the employers cannot use unfair labor practices with them and kill them off and import strikebreakers that use all sorts of rough methods, killing people, and covering labor, we believe that is the responsibility of this Government.

Now, we don't believe that the problem of bringing a fair and equitable return to the farmer is the same thing as that of labor, because, in the first place, farmers cannot restrict their output. The Government of the United States couldn't organize farmers tight enough under an organization, a voluntary organization, to cause them to restrict their output. The only way you can do it would be to rent their lands by the Government and keep it out of production.



So the two cases are not strictly comparable. I believe Government should do all it can to bring an equitable return to both labor and agriculture and to keep labor on the pay roll, too, because if there is anything that ruins labor unions, it is to have their membership taken off of the pay roll.

Senator PEPPER. Mr. Sanders, let's approach this matter of scarcity. The criticism that has been made of the closed shop and of some labor unions is that they might not have enough apprentices; they might curtail the volume of workers available to employers.

Now, I want to ask you whether or not we have resorted to the principle of curtailing production of farm products as a way of increasing the price that the farmers get for their product?

Mr. SANDERS. We have resorted to it, but we haven't been effective. We didn't reduce the total output of agriculture by 2 percent in 1933 as against 1929 in spite of the efforts.

Senator PEPPER. In instances where we have the support program in respect to the six basic commodities, doesn't the Federal Government require, as a condition of the payment of these support prices, that the commodity growers affected shall agree to the limitation of production, to a quota system?

Mr. SANDERS. They do, Senator, agree to limit the production to the quantity that can be taken off of the market at a reasonable price. They don't limit it below that amount.

Senator PEPPER. I know that, but I say now, just trying again to bring out an analogy that I think will work, so that if the workers do not feel that there should be more workers in a given trade than the market will fairly absorb and pay for, at a decent wage, the principle isn't so different from the imposition of a quota upon the cotton growers when we say, "All right, if we are going to give you a support price, you have to agree to limit production."

No one in this country, I believe, would advocate that we give agriculture unlimited support prices without any kind of quota system being imposed as a condition thereto, and yet you do not intend to be vicious about that, you do not intend to hurt the country, you have the highest motives in trying to give legitimate protection to these producers when you do that; is that right?

Mr. SANDERS. We do advocate, on the contrary, Senator, the Grange advocates, as I am sure you do, the flexible-floor method of support prices in order to avoid controls.

Senator PEPPER. But you do have a quota when you do get farm supports, don't you?

Mr. SANDERS. We would not necessarily have a quota if we had flexible-price support.

Senator PEPPER. If you had the flexibility, but you get less, when you have got a large production, you get a lesser support price and you get a higher support price with lower production.

Mr. SANDERS. Yes, sir. May I answer the question about the closed shop? I believe you asked me a question in your statement. I believe there is a definite difference in the closed shop and in support of farm prices because the closed shop, there is either no legal restrictions as to it as it existed prior to the act or it is a definite sanction on the part of the Government. I think if the Government sanctions a monopoly, which I think the closed shop is, I think it should undertake

to control the policies of that closed shop, and I don't believe labor unions want that.

Senator PEPPER. Mr. Sanders, let me ask you about this. In my State we grow a good bit of tobacco. Tobacco is one of the basic commodities which may receive support from the Federal Government.

Now before that commodity can become entitled to this Federal aid, they have to agree to a quota system. That is, that they will not plant more than a certain number of acres of tobacco, with some regard for the amount that the market will absorb. That is generally true, isn't it?

Mr. SANDERS. Yes.

Senator PEPPER. Now then, I remember here, years ago, making a fight in respect to this matter because I found that when the farmers had voted by referendum to make tobacco one of the basic commodities, that they had to submit to a quota system, and each farmer had to have a certain acreage and that the farmer, if he were a new farmer, if he moved into a community, into a county, where tobacco was being grown and he hadn't been growing tobacco and he went in to the authorities and said, "I want a quota, I want to plant 5 acres of tobacco," would he have got it?

Mr. SANDERS. There are some conditions under which he can get into tobacco production.

Senator PEPPER. But would he have received a quota? Is not that a kind of closed shop on tobacco growing?

Mr. SANDERS. Senator, you have picked a spot which I personally—I am talking personally now, please don't misunderstand me, and I want the record to be clear—I personally believe that is a wrong policy.

Senator PEPPER. It is Government policy.

Mr. SANDERS. I must confess that the Grange has endorsed marketing quotas as a last resort, and that is one flaw in our policy of abundant economy. I will have to confess that that is one of our weak spots. I thought you would bring me around to that sooner or later.

Senator PEPPER. That is what I was trying to do.

Senator AIKEN. Will the Senator yield?

Senator PEPPER. Yes.

Senator AIKEN. I was simply going to say that that system has weaknesses and it is running into trouble in some respects, but this isn't the time nor the place to talk about it.

Mr. SANDERS. We had some people in our office not so very long ago who told us that a tobacco quota in a certain State was worth \$1,000 an acre.

Senator PEPPER. There you are—if you could get in.

Mr. SANDERS. That is not the free-enterprise system I would like to see operating in this country.

Senator PEPPER. I realize that, but I couldn't escape the feeling that there were certain analogies that ought to be brought out and, as I said, I wanted it distinctly understood I am not critical of any of those, but I couldn't help but see great groups of farmers trying to protect themselves—and they need it, because I was born on a little farm and my father was trying to buy that farm on 4-cent cotton when I was a kid, and I know the privations of the farmer, some of them, and I am sympathetic, but at the same time I could see millions of honest workers with families, trying to protect them, and they had

aspirations for their children, and they associated themselves more effectively than the farmers have been able to organize, and these organizations have had a lot to do, I feel, with raising the standard of living in the workers' families of this country, and I thought that they should not be too severely discriminated against by national legislation.

Thank you, Mr. Sanders.

Senator DONNELL. Mr. Chairman, I appreciate that it is 12:30 and I certainly don't want to keep Mr. Sanders here, nor do I want to have him come back. I have a very few questions which I don't believe will take more than 5 minutes.

The CHAIRMAN. We will take 5 minutes.

Senator DONNELL. Mr. Sanders, I don't know whether the record shows your own background at all here this morning. I didn't get in early. If it does, don't repeat it.

Mr. SANDERS. It does not. I would like to say I was born in Texas and reared in Oklahoma.

Senator DONNELL. You are getting closer to Missouri.

Mr. SANDERS. That probably indicates my politics.

Senator DONNELL. What was your business before you became legislative counsel of the National Grange?

Mr. SANDERS. For 14 years I was head of the department of agricultural economics at Oklahoma Agricultural College, and I have had several years of research work with the Department of Agriculture. I worked for the War Production Board in the Farm Machinery Branch during the war and with UNRRA. I had charge of purchasing farm machinery for UNRRA.

Senator DONNELL. Do you have any recollection of the amount of dollars and cents that you supervised the purchase of for UNRRA?

Mr. SANDERS. No; I was promoted after about a year and a half to head of the Program Analysis Branch, and I think up to that time I had purchased about \$28,000,000 worth of machinery for UNRRA.

Senator DONNELL. Now, Mr. Sanders, I am wondering if it would be too much trouble for you to write down, not too modestly, a little biographical sketch that supplements that.

Mr. SANDERS. I would be glad to.

(Subsequently, Mr. Sanders submitted the following:)

#### BRIEF BIOGRAPHICAL SKETCH OF J. T. SANDERS

Born in Texas, 1889. Reared on farms in Texas and Oklahoma. Attended University of Oklahoma, George Peabody College, and University of Wisconsin, taking B. A., M. A., and Ph. D. degrees, respectively.

Research work in United States Department of Agriculture, 1919-24; head of department of agricultural economics at Oklahoma Agricultural College, 1924-37; assistant director, United States Resettlement Administration, region 8, 1937-38; senior agricultural economist, United States Department of Agriculture, 1939-42, in flood-control planning; with War Production Board and War Food Administration as economic adviser, 1942-45; in charge of Farm Machinery Purchases and Program Analysis Branch UNRRA, 1945-47; legislative counsel of National Grange, 1947 to date.

Senator DONNELL. Let us know what you have done from your birth on up, generally speaking, your education, background, and so forth.

There is one other thing along that line. You were speaking about the work you have done. I have been tremendously impressed about the thought you have put into this. You spoke about 75 members of this study group of the Potomac Grange.



Mr. SANDERS. Various study groups.

Senator DONNELL. Other persons in the Grange throughout the United States have been studying this problem, too, officers and members, to your knowledge?

Mr. SANDERS. Well, I am reasonably sure they have, Senator, although there are no organized committees except a few which the National Grange sets up.

Senator DONNELL. The National Grange set up a committee, it looked into and made its recommendations, you debated it at the national convention, the recommendations pro and con, and finally enunciated the recommendations you have presented here today; is that right?

Mr. SANDERS. That is right, Senator, we had a report of about 25 pages on the Taft-Hartley labor law and that was given to the session and was studied by the proper committees.

Senator DONNELL. If there is any objection to this, don't do it, but is there any objection to filing the list of the names of the group here, the Potomac Grange group, the 75 members, together with some of their occupations?

Mr. SANDERS. Senator, they would be on various committees. Many of them not primarily interested in labor, but we could file a list of the labor study group.

Senator DONNELL. Would you mind filing whatever you think gives us a proper picture of the type of people engaged in this study?

Mr. SANDERS. Yes, sir.

Senator DONNELL. You referred to your dues-paying members being about 825,000, distributed over 37 States, according to what Senator Smith told me about your testimony; is that right?

Mr. SANDERS. Yes.

Senator DONNELL. What proportion of the 825,000 are actual farmers or their families?

Mr. SANDERS. We do not have that specific figure. For example, Senator Aiken, who is a farmer, by the way, in Vermont, is a member but in the New England States a larger proportion of our membership are village people who are interested in agriculture than is the case in most all of the other States. In most all of the other States our membership is almost entirely agricultural.

Senator DONNELL. Could you give us, generally speaking, your best estimate of the number of the 825,000 who are farmers or their families?

Mr. SANDERS. I would guess fully 800,000 of them at least are farmers or their families.

Senator DONNELL. Now, are you conscious at all of your organization scattered around, 800,000 farmers and their families, plus these others you have spoken of, being subject to the dictates of the National Association of Manufacturers? Have you ever thought you were subject to that?

Mr. SANDERS. No, indeed. I think they would feel we were about as hard a group to deal with as any group they have to deal with.

Senator DONNELL. Have you been conscious of being subject to any intimidation or domination by Senator Taft or Mr. Hartley or any of their associates, you or your group, your National Grange?

Mr. SANDERS. No; I think that Senator Taft has a great deal more judgment than to try to dominate the Grange.



Senator DONNELL. And the Grange, in your judgment, is trying to exercise its independent judgment as best it can to give the very best service from the standpoint of public service and based on their knowledge—and their knowledge comprises the knowledge derived by some 800,000 farmers in the country; is that right?

Mr. SANDERS. That is quite true. We certainly don't want to appear to take any partisan view. We regret to have to testify in such a way that it might be interpreted as taking a partisan view, but we do not want it to appear that in any sense we are taking a political view in this testimony.

Senator DONNELL. My final question is this: You referred to the fact that in your judgment there have not been very many injunctions issued under the Taft-Hartley Act. I would like the record to show these facts as derived from the report of the Joint Committee on Labor-Management Relations filed December 31, 1948, first, that there are three different provisions of the statute under which injunctions may be sought.

Section 10 (j) gives the Board discretionary power to seek appropriate temporary relief, or a restraining order, upon its issuance of a complaint charging that any person has committed an unfair labor practice.

The report of this joint committee shows that between August 22, 1947, and December 31, 1948, six such injunctions were sought and three granted.

In the second place, section 10 (1) of the Taft-Hartley Act requires the Board to seek injunctive relief in secondary-boycott cases when there is reasonable cause to believe the charge is true and that a complaint will issue.

The record further shows, the joint committee report shows that 29 such injunctions have been sought and 15 have been granted.

Finally, in section 208, national emergencies, section 208 authorizes such relief upon the petition of the Attorney General when a strike or lock-out is one which affects an entire industry or substantial part thereof, and if permitted to continue will imperil the national health or safety.

Let the record show that of that type of injunctions six have been sought since August 22, 1947, and six have been granted.

Let the record finally show that the entire number of injunctions sought in the period mentioned, August 22, 1947, to December 31, 1948, is 41, of which 24 were granted.

I thank you very much, Mr. Chairman, and you, too, Mr. Sanders.

Senator PEPPER. Mr. Chairman, in the cross-examination on Thursday by me of Mr. Mosher, previously head of the NAM, there was some question raised as to whether I unintentionally or by fair inference castigated any class of people in this country as being lacking in patriotism or not discharging their full duty in war.

The record will show that—

Senator DONNELL. From what page are you going to read?

Senator PEPPER. Page 3987 is where I started. I was asking Mr. Mosher about the record of the National Association of Manufacturers in respect to legislation here before the Congress, what legislation they had advocated and what legislation they had opposed. Then he had stated that NAM didn't go into things that didn't directly concern NAM.

I stated that I suspected they went into things that affected their pocketbooks or their personal interests. Then I said:

I have been around here a number of years, and I have never yet heard your people advocate anything that has helped the people to live better, get better wages and have better living, and I want to tell you NAM is a greater enemy to democracy than American labor will ever be.

Then, reading further from the transcript on page 3988:

Mr. MOSHER. Well, that does not happen to be so.

Senator PEPPER. There are a lot of people that think so, and a lot of elections the votes think so, too.

Mr. MOSHER. Of course, as you repeat those remarks as often as you do, a lot of people might come to believe them.

Senator PEPPER. I believe a good many people have that opinion already. The general opinion is that NAM is the spearhead and the symbol of the reactionary business forces of this country that cannot see beyond the end of their noses.

Mr. MOSHER. Well, it so happens I personally know that it is not public opinion.

Senator PEPPER. Well, as I said, NAM has not won many elections that I know about, although they have got all the money and propaganda, and they generally control the press and the radio, and they control the prices, and they have got the arbitrary power to fire and hire, generally, when they want to, but it just seems to me mighty few things in the little over 12 years I have been down here that will get anybody in a better house, get him a better wage, get his children in larger schools and give his children better school teachers or better school-houses that I have heard NAM raise its voice for.

If labor is beginning to gain some economic bargaining power where they may force a decent wage, and they are not too successful at that, out of a recalcitrant and profiteering employer, then management mobilizes its might and they come rushing down here to advise Congress about democracy, and there is more democracy in labor unions than there is in management in America, and less feather-bedding.

The Senator from Minnesota has said there is less featherbedding in the ranks of labor than there is in the ranks of management in the country. There is less tyranny, there is less abuse of power, there is less monopoly, there is less danger to the public welfare in organizations of citizens than there is in these corporate octopuses that stands astride the American people's price structure and control in a few hands the economy of this country.

There is not anywhere in the world where management and where the employer side has such immunity and such power as in the United States. Nobody, no political leader in America of any prominence, and no political party is advocating nationalization of anything, not even the public utilities, not even the transportation system, and yet when we try to get a measure of economic justice for the masses of the people who fight its wars—and as a general rule it was the poor people whose sons went to the battlefields and a lot of the manufacturers' sons who stayed at home and got rich, and I know that a lot of them—

Mr. MOSHER. Just a minute, sir. I am losing my temper.

Senator PEPPER. Well, I do not care; lose it.

Mr. MOSHER. I lost three members of my family in the war.

Senator PEPPER. I know who made the profits out of the war. I know who make the profits out of every war.

Mr. MOSHER. Who did make the profits out of the war?

Senator PEPPER. The management of the country.

Mr. MOSHER. Show it in the record. It is not here.

Senator PEPPER. They are making it today in the biggest mass of profits management has ever made, and right at the time that management is making the biggest profits they have ever made, why they have come down here and made a crusade to try to weaken the labor unions so that the workers will get a lesser share.

Senator DONNELL. Mr. Chairman, I move that the witness be permitted to testify, now that the Senator from Florida has testified so voluminously.

Senator PEPPER. The Senator from Florida has had a good example from the Senator from Missouri.

Senator DONNELL. I think that is possibly true. I think the witness likewise should be permitted to have a few words, if he desires. Did you say three members of your family died in the war, Mr. Mosher?

Mr. MOSHER. Yes, sir.

Senator DONNELL. I would like to have the record show that I mentioned Senator Albert Hawkes, our former colleague. If I am not mistaken, he is the head of the Congoleum Co., and I think he lost his son in the war. I do not think the loss of sons is confined to labor. I pay all tribute to labor, too, but I think the matter of loss of boys and girls, for that matter, has not been confined to one segment of our population.

Senator PEPPER. I made a generalization. \* \* \*

I want to say for the reporter that while he probably didn't hear me, I said I do not impeach the patriotism of any individual, and then I said:

I made a generalization, and it is true of every war we ever fought, a few people stay home and make the money and the masses of the people go out and are slaughtered on the battlefields.

Now, Mr. Chairman, of course, what I had in mind was the figures that have been made available from time to time as to what corporate profits have been during the war period, and I have a statement of that which I would like to have incorporated in the record.

The CHAIRMAN. Without objection, it will be made part of the record.

Senator PEPPER. I have another statement showing how the income of the various categories in the group from \$100,000 to \$150,000 went up from 1,964 in 1940 to 5,530 in 1945; in the group from \$150,000 to \$300,000, they went up from 1,131 in 1940 to 2,871 in 1945; from \$300,000 to \$500,000, they went up from 267 in 1940 to 528 in 1945; from \$500,000 to \$1,000,000, they went up from 128 in 1940 to 258 in 1945; and \$1,000,000 and over went up from 52 in 1940 to 71 in 1945.

The CHAIRMAN. Without objection that tabulation will be made a part of the record.

(The figures and tabulation referred to are as follows:)

TABLE 1.—*Distribution of families and individuals by total money income level, for the United States, 1947*

Total money income level	Total	Total urban	Total money income level	Total	Total urban
<b>FAMILIES AND INDIVIDUALS</b>			<b>FAMILIES AND INDIVIDUALS—</b>		
Number.....(thousands)...	45, 336	28, 268	continued		
Percent.....	100. 0	100. 0	\$3,000 to \$3,499.....	10. 0	10. 3
Under \$500.....	9. 1	7. 1	\$3,500 to \$3,999.....	7. 3	8. 2
\$500 to \$999.....	8. 5	6. 8	\$4,000 to \$4,499.....	5. 9	6. 7
\$1,000 to \$1,499.....	8. 7	7. 6	\$4,500 to \$4,999.....	4. 1	4. 9
\$1,500 to \$1,999.....	9. 1	7. 9	\$5,000 to \$5,999.....	6. 5	7. 4
\$2,000 to \$2,499.....	11. 0	10. 8	\$6,000 to \$9,999.....	7. 6	8. 9
\$2,500 to \$2,999.....	9. 9	10. 6	\$10,000 and over.....	2. 4	2. 7
			Median income.....	\$2, 685	\$2, 961

Source: Department of Commerce.

#### CORPORATION PROFITS AND SMALL BUSINESS

1. Over 500,000 small firms were eliminated from the market during the war years.

2. Between 1940 and 1946 over 1,800 independent competitive firms in manufacturing and mining have disappeared as a result of mergers and acquisitions. Their assets alone were equal to 4.1 billion dollars or 5 percent of the total assets during the war.

3. The concentration of employment and industrial manufacturing facilities is now greater than ever before. In 1939 the number of firms with under 500 employees in manufacturing industries was 51.7 and in 1944, 38.1. It is estimated



that manufacturing firms with over 500 employees received 70 percent of the war contracts and companies with 500 or less workers received 30 percent of the war contracts.

At the beginning of 1948, 113 manufacturing companies, each with assets of over \$100,000,000 owned 50 percent of the Nation's manufacturing property, plants, and equipment.

In 1939, 250 of the largest corporations held 25.9 billion dollars at 65 percent of the gross value of the manufacturing facilities in the country. By 1937 they had acquired 37 billion dollars worth resulting primarily because they had acquired about 70 percent of the usable Government-financed plants through the War Assets Administration.

In 1935, 0.1 percent of the corporations earned 50 percent of the net income of all corporations. Of manufacturing corporations less than 4 percent earned 84 percent of all the net profits in 1935.

About 3,900 corporations in 1944 had assets of \$10,000,000,000 or more of the total of 363,000 corporations submitting income-tax returns. These 3,900 companies owned over three-fourths of all the assets in the country and had over 60 percent of the total net income of all corporations.

Corporate profits after taxes, were as follows:

1939 -----	\$5, 000, 000, 000	1944 -----	\$10, 800, 000, 000
1940 -----	6, 400, 000, 000	1945 -----	8, 700, 000, 000
1941 -----	9, 400, 000, 000	1946 -----	12, 800, 000, 000
1942 -----	9, 400, 000, 000	1947 -----	18, 100, 000, 000
1943 -----	10, 400, 000, 000	1948 -----	20, 900, 000, 000

Sources: The Future of American Independent Business. Final Report of Senate Small Business Committee; The Economic Report of the President, January 1949. Reports of the Treasury Department.

*Individual income-tax returns for 1940 and 1945*

[In thousands]

Income class (all classes)	Number of returns		Total net income		Total tax	
	1940	1945	1940	1945	1940	1945
Total, all classes -----	14, 665	49, 751	\$36, 588, 546	\$120, 301, 131	\$1, 495, 930	\$17, 050, 378
\$100,000-\$150,000 -----	1, 964	5, 530	235, 754	661, 464	110, 629	387, 962
\$150,000-\$300,000 -----	1, 131	2, 871	226, 596	569, 597	122, 832	350, 103
\$300,000-\$500,000 -----	267	528	101, 756	202, 032	61, 041	123, 617
\$500,000-\$1,000,000 -----	128	258	84, 224	169, 744	51, 173	109, 962
\$1,000,000 and over -----	52	71	95, 564	123, 384	66, 619	79, 900

Senator PEPPER. I was referring, of course, to a generalization. I had known of some cases where the sons of management had gained deferment, some of them in my State, because they were essential to the industry; but if I said in the heat of exchange anything that was interpreted to castigate the manufacturers as a class, why, I certainly regret it. I certainly didn't intend it, and not only that, I didn't say it.

I said, "as a general rule," and then I said, "a lot."

Now, to show you how you get a fair—

Senator DONNELL. Would the Senator mind repeating that language, page 3990, beginning with "and as a general rule"?

Senator PEPPER. This is the part of it that was the controversial part. Of course, taken out of its background and taken out of the subsequent part when it indicates I was talking about profits and who made the profits out of war, and when 2 percent of the corporations of this country employ sixty-odd percent of the industrial workers of the country, it is pretty easy to see who gets the wages and who gets the profits—management, of course, and not labor. That is what I was talking about.



Senator DONNELL. I have no objection to including also at this point in the record, any other part of the context which the Senator thinks should be included.

Senator PEPPER. The part of it that, had it been even literally and accurately quoted—

and yet when we try to get a measure of economic justice for the masses of the people who fight its wars—and as a general rule it was the poor people whose sons went to the battlefields and a lot of the manufacturers' sons who stayed at home and got rich, and I know that a lot of them—

and then came the rest. Afterward, I indicated again that I was talking about who made the corporate profits of the country, and it wasn't the rank and file of the soldiers out there, it was primarily big business enterprises back here, and the American Legion, as I had in my mind, has been making a fight ever since World War I to take the profits out of war, and we tried everything we could think of here during the last war to take the profits out of war. We never were able to succeed, and when President Roosevelt recommended that every man's individual income be limited to \$25,000 a year, we defeated it up here, although the Senator from Florida voted for it.

What I wanted to say was—

Senator DONNELL. Would the Senator be kind enough now while we have the record here—in addition to what he has already quoted into the record, I think it would be well to put in page 3991, where it happens that I was the individual who said it, although it would be immaterial, the statement about Senator Hawkes having lost his son, I said:

I do not think the loss of sons is confined to labor. I pay all tribute to labor, too, but I think the matter of loss of boys and girls, for that matter, has not been confined to one segment of our population.

Then, Senator Pepper said:

I made a generalization, and it is true of every war we ever fought, a few people stay home and make the money and the masses of the people go out and are slaughtered on the battlefield.

Senator PEPPER. That is the point I was talking about, and I didn't intend to, and I don't think the fair inference, if you take the whole quotation, is that I was condemning one class as against another.

But the Evening Star of yesterday didn't even quote the quotation literally, although I suppose it could have had access to it, it had me saying on the editorial page:

Senator Pepper went on to shout—

in a new sentence, a separate sentence—

It was the workers' sons who died on the battlefield while the sons of the manufacturers stayed at home and got rich.

Indicating I was talking about and condemning the whole class of manufacturers, which is an untrue and an unfair inference to be drawn actually from what was said.

Of course, I needn't hope that the Evening Star or any of the rest of them that wanted to take advantage of that to attack me because I called attention to the record of the NAM—of course, there won't be another editorial tomorrow that will give my explanation and that will say that if I had said any such thing as that, that it was unintentional and that I regret I said it and I shall be pleased to tell Mr.

Mosher so, but we will see whether or not there will be an editorial on there tomorrow saying, "We are pleased to see Senator Pepper read the whole statement from which our quotation was given and we are pleased that Senator Pepper pointed out the inaccuracy of our quotation, and we are pleased that Senator Pepper has said that if unintentionally he gave offense or in any way whatever attempted to speak disparagingly of the patriotism of the manufacturing class, of course, it would be an unfounded remark and one that he would retract in the fullest possible degree."

SENATOR DONNELL. I join with the Senator in expressing the hope that the Star and any other newspaper—and I have no doubt this matter was carried widely over the country—will make a statement fully, completely, and accurately of what the Senator said here today.

I think in fairness to him that it should be said. I would judge that perhaps the language stated in the Evening Star, which the Senator quoted, was thought to be by the writer of that article a correct statement from this sentence or this portion of the sentence which the Senator has already quoted from page 3990—

and as a general rule it was the poor people whose sons went to the battlefields and a lot of the manufacturers' sons who stayed at home and got rich, and I know that a lot of them—

Then he was interrupted by Mr. Mosher.

I certainly join with the Senator in hoping that a full and complete statement will be carried in the press throughout the country.

SENATOR SMITH. Mr. Chairman, I would like to make one observation. I appreciate what the Senator from Florida said because I was deeply grieved about the statement the other day. I had some dear and close relatives and friends, sons of successful businessmen, who not only went to war immediately upon its declaration, but were killed in the war, and it hurt my feelings that any colleague of mine should have seemed to imply lack of patriotism, but I want to say I think we are making a serious mistake in this committee.

We are bringing up these things that seem to divide labor and management when we ought to seek a way to bring about a statesman-like approach to this legislation and not have it appear as warfare between two groups.

I resent the warfare. I want to see cooperation, and I hope, Senator Pepper, you and I can cooperate to bring that about and not keep emphasizing that management is all wrong or that labor is all wrong. Both have made mistakes, but we should unite our forces and not divide them during a time when there are such conditions and such threats from abroad as we have today.

SENATOR PEPPER. We want to preserve democracy in our country, of course.

THE CHAIRMAN. I would like to have inserted in the record at this point a letter from Mr. Philip Murray addressed to myself.

(The letter referred to follows:)

HON. ELBERT D. THOMAS,

*United States Senate, Washington, D. C.*

DEAR SENATOR THOMAS: During the past few days, while recuperating from an operation in a hospital here in Pittsburgh, I have given much thought to the hearings on Senate bill 249, your bill to repeal the Taft-Hartley Act and to restore the Wagner Act with certain amendments. I have read the transcript of the

testimony and followed carefully the accounts in the press of the hearings and of the issues. I should like at this time to convey to you, for inclusion in the record of the hearings, my views with respect to this all-important issue of a sound labor law and my reactions to the current labor legislative situation.

1. The Eighty-first Congress has been in session for some 50 days. During that period of time not a single one of the sorely needed measures constituting the Fair Deal program has been enacted or even reached the floor of Congress.

In my view the Thomas bill is the keystone of the entire program of the administration. Millions of Americans who voted in the recent elections have made it clear that they want a fair and equitable labor statute substituted for the oppressive Taft-Hartley Act. No amount of statistical juggling by columnists or pollsters can obscure the basic fact that both the Republican and Democratic Parties made the Taft-Hartley Act the principal issue in the recent election. This act is the most important single product of the Eightieth Congress. It is part of a program of reaction and privilege which extends to the entire social-welfare field, including housing, wage-and-hour laws, and legislation for adequate health and medical care. The election was nothing if it was not a repudiation of the Eightieth Congress.

S. 249 is not just another law. It is a major step forward in repudiation of the work of the Eightieth Congress. The Taft-Hartley Act, which S. 249 repeals, was part of an integrated attack by that Congress upon the living standards of the common people. The Taft-Hartley Act was part of the systematic dismemberment of social legislation which was the exclusive preoccupation of the Eightieth Congress. It was part of the process which resulted in wiping out price control, weakening rent control, and formulating a tax program which shifts the tax burden of America from its well-to-do to its working people. The Taft-Hartley Act was part of the legislative program which instead of raising the minimum wage actually made it more difficult for workers to obtain rights under the wage-and-hour law by crippling its enforcement. The Taft-Hartley Act was a part of a drive which cut funds for the vital social needs of America's common people, which enfeebled the functioning of social-welfare agencies in the Government, which ignored the needs of veterans, which scorned pleas for adequate health insurance and which busied itself in insulating monopoly from effective regulation.

The Thomas bill marks a momentous crossroad in our national life. If we pass this bill we will have made an indispensable first step in repudiating the reactionary program of the Eightieth Congress. If the bill fails of passage or is saddled with crippling amendments it will bring home to millions of Americans that the ghost of the Eightieth Congress still rules the Eighty-first and that their votes for a better America were in vain.

Despite the recent election and despite the bitter lesson which we have learned from the 18-month operation of the Taft-Hartley Act, the same process and the same forces which imposed that act upon our people are now again at work in an effort to salvage its basic provisions.

As a matter of fact, the campaign of propaganda and of maneuver to save the Taft-Hartley Act which is being conducted today by powerful industrial interests rivals in its intensity the well-financed employer program of 1947 which put over the Taft-Hartley Act. This campaign has certain clear and identifiable characteristics.

2. Those who are determined to save the Taft-Hartley Act repeatedly claim that labor has no basic objection to the act and that it cannot document its case against the act. I have heard such comments not merely from legislative spokesmen for employer groups. I have with some amazement read this same charge in numbers of newspaper editorials. A charge of this kind is completely without foundation. This charge is one of a series of facile misrepresentations desperately resorted to by the defenders of the Taft-Hartley Act. The records of your committee abound with specific and highly detailed accounts by representatives of labor of the manner in which the operation of the act has been disastrous to the functioning of free labor unions. The Congress of Industrial Organizations, through its general counsel, Arthur J. Goldberg, submitted to the committee a statement of some 112 pages, as well as a 56-page appendix, and oral testimony elaborating the specific ways in which the law has violated accepted standards of soundness and decency of labor relations. I wholeheartedly endorse and reaffirm the testimony of General Counsel Goldberg before your committee.

Most newspapers, however, prefer to ignore this uncontradicted evidence against the act and maintain the fiction that objection to this law is somehow



mystical and irrational. It is simply not true that the case against the Taft-Hartley Act cannot be documented or particularized. On the contrary, those who seek to justify the act have no use for facts. They prefer instead the partisan theorizing of employer lobbyists masquerading as impartial "experts." They prefer to blind themselves to industrial realities and to justify repression of American working people on the basis of shadowy abstractions. This lack of realism is aptly illustrated by Senator Taft's insistence that there are no sweatshops in America, that sweatshops are "just talk."

The apologists for the Taft-Hartley Act prefer most of all to justify legislation affecting millions and millions of Americans upon the basis of an isolated and unrepresentative "horrible" example carefully dressed up and repeatedly trotted out to confuse and frighten the unwary.

The repressive Taft-Hartley Act was itself passed through the use of this clever technique of seizing upon one or two unrepresentative fact situations to justify legislative provisions far beyond their literal reach. The hearings on the Taft-Hartley Act are replete with the use of this device. Now, in the present hearings, the same technique has been revived and warmed over. The shocking boycott provisions of the act are again justified by vague references to extreme fact situations which are not remotely typical of the boycotts in which workers normally engage. The same stock examples, now somewhat frayed, which were resorted to by Senator Taft in 1947 to justify his disastrous elimination of the closed shop are again trotted out.

I do not know of any field of legislation outside of the labor field, where Congress would dare abridge the rights of millions of Americans on the basis of isolated and unrepresentative abuses. Senator Taft and some of his Republican colleagues would be outraged if the same technique were used to justify legislation invading the employers' rights.

It is, of course, obvious that the device of the horrible example is unfair and irresponsible. It results, as in the case of the Taft-Hartley Act, in imposing upon labor a myriad of unjust restraints—in a field where a minimum of governmental intervention is imperative. It means the very regimentation which Senator Taft professes to abhor in other connections.

3. I think it clear from even a casual reading of the hearings that both the charge that the Taft-Hartley Act cannot be demonstrated to be unfair and the technique of the horrible example have exploded in the faces of the defenders of the Taft-Hartley Act.

In the record of the hearings, Senator Taft has made a long list of concessions and retreats with respect to the specific provisions of the Taft-Hartley Act and their operation in practice. These are some of his own repudiations of important provisions of his own law:

(1) He has repeatedly conceded that the provision in the act permitting strikebreakers to vote in elections but denying that right to strikers is one-sided and is a strikebreaking provision.

(2) He has conceded that even under his own theories some boycotts are justifiable and that the Taft-Hartley Act goes too far in this regard.

(3) He has conceded that the provisions of the law which make it mandatory to obtain injunctions against unions but not against employers are one-sided and should be eliminated. This would presumably mean the elimination also of the correlative provisions providing for damage suits where such injunctions lie.

(4) The closed shop prohibition apparently no longer seems to Senator Taft to be a vital provision in the law. He appears willing to scrap it.

(5) Senator Taft has admitted that the notice provisions of the law are poorly drafted and create difficulty in connection with wage reopening clauses.

(6) Likewise he has recognized that the penalties which may be imposed upon unions and their members for violations of the notice provision are excessive.

(7) He has expressed the view that the affidavit provisions are improperly drafted.

(8) Senator Taft has indicated his disagreement with the formulation of the "featherbedding" provision of the Taft-Hartley Act.

(9) He has recognized that the present free speech provisions of the act go too far.

(10) He has conceded that the provisions of the Taft-Hartley Act imposing limitations upon political expenditures by unions are ambiguous.

(11) He has conceded that the problem of welfare funds was not properly handled in the Taft-Hartley Act.

(12) He has admitted that the enormous concentration of unreviewable power in the general counsel may be legitimately criticized.

(13) He has admitted that the provisions for union authorization elections to obtain union security are unsound and should be deleted.

(14) He has conceded that the present injunctive provisions of the Taft-Hartley Act dealing with so-called national-emergency strikes permit of too broad an application.

(15) He has accepted the provision in the Thomas bill authorizing emergency boards to make recommendations for the purpose of settling disputes, a power which is withheld from emergency boards created under the Taft-Hartley Act.

(16) Not only has Senator Taft expressed doubts concerning the present powers of the general counsel but he has expressed a lack of confidence in the general counsel in a number of specific ways. For example, he has expressed disagreement with the general counsel as to whether small local business is covered by the Taft-Hartley Act. He has repeatedly insisted that the act must be amended to limit its scope.

(17) Similarly, he has expressed lack of confidence in the general counsel with respect to the rulings of the general counsel that a member of a picket line is an agent of a union for purposes of the Taft-Hartley Act and that a failure of a union to comply with notice provisions of the Taft-Hartley Act is a refusal to bargain.

(18) He has conceded that the provision for polling the employees at the end of the 80-day no-strike period with respect to the employer's last offer should be eliminated.

These are some of the more salient concessions which Senator Taft has made.

How can it be denied that these concessions on the part of the leading sponsor of the Taft-Hartley Act demonstrate the utter bankruptcy of that statute?

These admissions stem from something deeper than an accidental benevolence. To my way of thinking, they add up to a reluctant confession on the part of the leading sponsor of this law that it is unworkable and that its fundamental conceptions are foreign to a sound labor-relations statute.

4. Part of the desperate campaign to save the Taft-Hartley Act involves an attempt to score political points, to obscure the fundamental issues which are involved in this legislation by improvising synthetic issues purely for purposes of avoiding a defense of the act.

Nowhere is this best seen than in the furious but essentially mock debate with respect to the so-called emergency strike issue.

As I see it, those who are opposed to the bill have conveniently split into two camps: Those who insist that the bill is bad because it contains no injunctive provisions to save the country from "paralysis" and those who insist that the bill is objectionable because it does contain injunctive provisions which threaten basic freedoms. It is a curious thing that those who condemn the bill because it lacks injunctions and those who condemn it because they believe it to contain injunctions never find an occasion to engage in a public debate in the course of the hearings on their sharply divergent viewpoints. These Senators never attack each other. They find it strategically far more convenient to attack the bill. And the combined purpose of their attack is to suggest that the bill places the country either at the mercy of a tyrannical President or of workers free to strike without injunctive restraint.

I think it can fairly be said that the entire issue with respect to the President's inherent powers has been deliberately confused by opponents of the Thomas bill. The fact is the bill contains no injunctive provisions, and it is not the purpose of the bill to employ the device of the injunction in strikes affecting the national health or welfare. Secretary Tobin made this plain in his sponsoring testimony.

Those who attack the emergency provision of the bill apparently hope to conceal the fact that the Taft-Hartley Act 80-day injunctive provisions and the supporting procedures have completely and utterly failed. The record and the testimony of such witnesses as William H. Davis and Cyrus Ching show clearly that the Taft-Hartley injunctive provisions serve to cause strikes and to prevent settlements and make no constructive contribution in any way to the protection of the national welfare.

Efforts to shackle labor with the injunction as a means of settling disputes invariably coincide with periods of great national tension. The first of such efforts occurred in 1893 when the Debs injunction became the spearhead of a vast antilabor crusade against American working people. The threat that the injunction would become a tremendous means of repressing the American labor movement haunted our people. The Clayton Act was finally put on the books to avert this threat.

The second injunctive drive occurred during and after the First World War when sweeping strikebreaking injunctions were issued in the coal industry and in the railroad industry. These and other injunctions which followed again produced a legislative defense in the form of the Norris-LaGuardia Act.

The Taft-Hartley Act represents the third attempt of organized antiunionism and its congressional spokesmen to utilize the tensions and readjustment as the postwar period to foist upon the American people the injunction as a means of smashing strikes. This third historic attack on labor must be stopped.

It is an ironic circumstance that those who insist upon permanently introducing injunctions into our national life do so on the ground that the public must be protected. But it degrades the public interest to assume that we protect it by forcing workers to work against their will for the profit of private employers. The public interest demands above all that we have a free America. And this third devious attempt to restore government by injunction must be exposed because a free labor movement is a vital part of a free America.

It seems to me that the maneuvers and the schemes of those who hope to defeat the Thomas bill have a long genealogy. They date from the days of the infamous Liberty League. S. 249 must not be permitted to fall prey to the antilabor reactionaries who for over 12 years in this country have fought desperately to prevent the establishment of a sound labor policy.

I strongly urge that S. 249 be promptly reported out of committee and that, with the minor technical amendments sponsored by the Congress of Industrial organizations, it be passed as the first step in a vitally needed and long-overdue legislative program.

Respectfully yours,

PHILIP MURRAY, *President.*

The CHAIRMAN. The committee will stand in recess until 2:30.

(Whereupon, at 12:55 p. m., the committee recessed until 2:30 p. m. this day.)

#### AFTERNOON SESSION

The CHAIRMAN. Mr. Whitney, please.

Mr. Whitney, will you state your name, your address, and your representation, and any other remarks you wish to make, for the record.

You know, Mr. Whitney, the method under which we are trying to proceed: a 10-minute oral statement, and then your entire statement will go into the record.

#### STATEMENT OF BYRL A. WHITNEY, DIRECTOR, EDUCATION AND RESEARCH BUREAU, BROTHERHOOD OF RAILROAD TRAINMEN

Mr. WHITNEY. I have made a summary, Mr. Chairman, which originally was to be given by Mr. A. F. Whitney, our president, and I think I can complete the summary in 10 minutes.

The CHAIRMAN. That is fine.

Mr. WHITNEY. And may the full statement be placed in the record?

The CHAIRMAN. Yes; the full statement will be placed in the record.

If you will proceed, please.

Mr. WHITNEY. My name is Byrl A. Whitney, and I am director of the education and research bureau, Brotherhood of Railroad Trainmen, with general offices at 1528 Standard Building, Cleveland 13, Ohio.

The Brotherhood of Railroad Trainmen, with a membership of approximately 216,000 throughout the United States, Canada, and Newfoundland, represents railroad conductors and brakemen in road, freight, passenger and yard service, train baggagemen, yardmasters, dining-car stewards, switchtenders, car-retarder operators, and inter-



city bus operators. Bus operators and some employees of industrial plants represented by the brotherhood are subject to the provisions of the Taft-Hartley Act.

In the attempt to rid the country of the Taft-Hartley Act, we are reminded of the great truth expressed by Henry George, "A great wrong dies hard." The industrial history of America, prior to the Taft-Hartley Act, is one of progressive improvement in the workers' living and working conditions and of the enlargement of their freedoms.

The Nation was freed from the injustice of regarding trade-unions as "conspiracies in restraint of trade."

The commodity theory of labor was denounced by Congress in 1914 in the enactment of the Clayton Act, which declared that "The labor of a human being is not a commodity or article of commerce." In 1932, under the Hoover Republican administration, "government by injunction" in the human relationships of industry was ended by enactment of the Norris-LaGuardia Act. The Taft-Hartley Act turned the hands of time backward many decades.

The open-shop drive of the laissez-faire period of the 1920's reduced trade-union membership from over 5 million in 1920 to 3.5 million in 1929. Wages declined and unemployment increased, while profits soared.

As during the present period, the national income shifted more and more from consumers to profit takers.

In 1929, the panic came. As a means of restoring living standards and mass purchasing power, the National Labor Relations Act of 1935 was enacted, even with the blessing of some very worried employers.

That act succeeded. Strike statistics over the question of union recognition prove that. In 1937, 60 percent of the workers were involved in strikes which included the issue of union recognition. In 1946, only 12 percent were involved in such strikes. The democratic principle of collective bargaining, as against compulsory court procedures, had become quite firmly established in the American economy. And then came the Taft-Hartley Act which encouraged the compulsions of court procedures instead of the processes of collective bargaining.

Did the Wagner Act hurt employers or business? It did not even have any realistic application to any employer who honestly and wholeheartedly recognized that his employers were free to form and join organizations of their own choice. It only required employers, like everyone else, to refrain from intimidating or interfering with the exercise of the democratic rights and liberties of their fellow citizens who happened to work for them. The share of national income going to corporate profits increased from 5.3 percent in 1935, the year the Wagner Act was enacted, to 12.2 percent in 1947. From 1935 to 1947, the over-all increase in corporate profits after taxes was 687 percent, as compared with an increase in wages of 244 percent. Certainly these facts do not demonstrate any need for shifting power from labor to the corporations and monopolists.

The Wagner Act had not achieved its full purpose at the time it was corrupted into the Taft-Hartley Act. Only about 15,000,000 of some 60,000,000 of workers are organized.

It would be good for the country, good for business, and good for the workers if a clerk in a 10-cent store belonged to a healthy strong union that made it possible for her to live upon her earnings, instead of depending upon her parents to supplement her niggardly wage.

In the period following World War II, workers suffered a serious decline in take-home pay as a result of loss of overtime pay and down-grading. On the other hand, corporations made millions out of war. Monopolies grew in size and power. They were allowed to purchase Government war plants for a few cents on the dollar. They were allowed extravagant amortization write-offs of wartime capital purchases and were given kick-backs in corporate taxes which made it possible for corporations to enjoy substantially as much profits for idling as for producing.

Corporations were riding on a crest of profits and arrogance unequaled in our history. Price control was destroyed. Workers were caught between run-away prices and reduced take-home wages.

Congress did nothing about minimum wages or social security or housing and health legislation. The Eightieth Congress responded only to the demands of the monopolists that labor be "curbed" and the Taft-Hartley Act was the result.

Despite these injustices to workers and bounties to employers, the decline in strikes during the life of the Taft-Hartley Act has been less than during the period following World War I, when these economic injustices which I have described were not present.

Between 1920 and 1921, there was 32 percent decline in strikes, as compared with the Taft-Hartley era of 1947 and 1948, when there was only a 15-percent decline. And with corporations giving labor \$1 in wage increases and taking \$2 or \$3 in price increases, who can honestly assert that the Taft-Hartley Act, rather than staggering profits and prices, is the cause of decline in strikes during the life of that act?

The Taft-Hartley era is comparable to the open-shop era of the 1920's, and now as then, the profit takers are taking more and the consumers are getting less of the national income.

The monopolists have grown so strong that the Federal Trade Commission has warned the country that our free-enterprise system will be at an end if the problem of monopoly is not solved.

Monopolists fear trade-unions. They know they are the most effective economic counterforce to monopoly. They have used the "stop thief" technique to hide their ugliness from the people by calling organized labor a monopoly, despite the fact that only about one worker in four is organized and 2 percent of the corporations employ about 60 percent of the industrial workers.

Those who regard trade-unions as monopolies simply do not believe in the democracy of collective bargaining. They are back beyond the days of the Norris-LaGuardia Act and the Clayton Act of 1914, back to the days when human labor was considered as a commodity or article of commerce, the workers organizations as "conspiracies in restraint of trade" and the un-American "government by injunction" in the human relationships of industry prevailed. Those who do not understand that the Taft-Hartley Act is a response to the demands of the monopolists to preserve and extend their powers, understand neither the Taft-Hartley Act nor the serious monopoly problems that confront this country.

It must never be forgotten that workers have a far greater incentive to maintain production than employers and absentee owners have. In a strike or lock-out situation the workers involved suffer every inconvenience that every other citizen suffers, and in addition they lose their pay for the time they are out of work.

Employers and their representatives seldom miss a pay check or skip a meal. The Taft-Hartley Act aggravates this situation, and with its court procedures and government by injunction undertakes to make the worker completely helpless as against the arrogant employer who already has too little incentive to seek peaceful settlement of disputes with his employees. This is true whether or not an employee is engaged in a so-called essential industry.

I heard Senator Humphrey read the stenographic report of a meeting between General Counsel Robert Denham, of the National Labor Relations Board, and his employee representatives. Although Denham glibly told your committee that he recognized the right of Government employees to belong to unions and to have working agreements, he did not deny to your committee that he told the representatives of his employees that he would agree to nothing. These glib, cavalier pronouncements on workers' rights, followed by the ruthless and arrogant denial of the practical applications of those rights is what causes strife in what might otherwise be peaceful labor-management relationships.

Although the Taft-Hartley Act purports to protect the right to strike, it requires workers to scab on themselves and it permits the scabs, to the exclusion of the striking workers, to vote in government-sponsored elections. I protest against the essential immorality of the Taft-Hartley Act.

It is high time that some people in this country begin to think about the causes of provocation and the rights of the provoked, instead of forever thinking in terms of legal restrictions on the provoked at the behest of the provokers.

The labor injunction is the weapon of the coward. It is a peacetime conscription of working people only, for the particular benefit of the profit takers. It never solves labor disputes; it only protects the unjust in their injustices. It is not organized labor that threatens our democratic way of life. It is the would-be destroyers of organized labor, the monopolists and the cartelists, who are threatening our free-enterprise system and our democratic way of life. The Taft-Hartley Act is proof enough of this charge.

We therefore favor S. 249. We would suggest only that title I of the bill be included in the exemption of the Railway Labor Act.

As to the exhibits to this testimony which show the increased costs to the Brotherhood of Railroad Trainmen for representation of bus operators for 17 months under the Taft-Hartley Act compared with 19 months preceding the effective date of the Taft-Hartley Act, you will observe that the total cost for 17 months under the Taft-Hartley Act was \$123,568.83, as compared with only \$62,709.02 for 19 months preceding the Taft-Hartley Act, or an increase of 97 percent. Yet the Taft-Hartley Act involves only 3.4 percent of the Brotherhood of Railroad Trainmen members. In the Rockland Coaches case, the management, almost immediately after the effective date of the Taft-Hartley Act, served notice of cancellation of our contract. To pro-



tect our members against the ravages of that act, it cost the brotherhood \$32,267.24 and resulted in a 61-day strike. To some, that would probably be evidence of the success of the Taft-Hartley Act, but to those who want free labor and free enterprise in America, it is proof enough of the failure of the Taft-Hartley Act.

The CHAIRMAN. Mr. Whitney, in your statement, where you say:

We therefore favor S. 249. We suggest only that title I of the bill be included in in the exemption of the Railway Labor Act—

will you speak about that just a little bit so that the record will be clear as to the reason why you make that suggestion?

Mr. WHITNEY. Mr. Chairman, that is developed quite fully on page 13 of Mr. A. F. Whitney's principal statement. It is only a paragraph. Would you wish me to read it at this time for clarity?

The CHAIRMAN. Yes; if you will, please, for that part of the record. That is page 13?

Mr. WHITNEY. Page 13 of the long statement.

The CHAIRMAN. Page 13 will probably have a different page in the record.

Mr. WHITNEY. Well, it is in the statement before you.

The CHAIRMAN. Yes.

Mr. WHITNEY (reading):

Before closing my testimony, I should like to call to your attention what I believe to be a rather serious mistake in S. 249. Please refer to section 405 (f), page 21, Exemption of Railway Labor Act. Only titles II and III of S. 249 are made inapplicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended. I can think of no good reason why title I of the proposed law should not also be included in this exemption. Obviously, that part of the title I relating to repeal of the Taft-Hartley Act and establishing the National Labor Relations Act of 1935 and the creation of the Board thereunder, would have no appropriate application to the subject matter covered by the Railway Labor Act. Other parts of title I would seem to have no reasonable applicability to the subject matter covered by the Railway Labor Act. Secondary boycotts and jurisdictional disputes are not a problem in the railway industry and some of the language in title I of S. 249 might interfere with the established procedures under the Railway Labor Act.

If it were deemed desirable to make any changes in the provisions of the Railway Labor Act, such changes should be brought about by amending that act, rather than by confusing its terms with the legislation now under consideration by your committee. In other words, I propose that the same complete exemption of the subject matter covered by the Railway Labor Act that was provided for in the National Labor Relations Act of 1935 be included in S. 249.

The CHAIRMAN. Thank you, Mr. Whitney.

Mr. WHITNEY. May I, Mr. Chairman, state that on page 2 of the long statement, there is a very slight correction in the third paragraph, the third line, where it says, "our full economy," it should be "free economy."

And on page 7, may I make a correction in the second paragraph about midway of the—well, it is really the first full paragraph, "workers were caught between run-away prices and take-home wages." It should be "reduced take-home wages."

That is all, Mr. Chairman.

The CHAIRMAN. Senator Murray.

Senator MURRAY. I waive any questions.

Senator HILL. I have just one question, Mr. Whitney.

You have made a strong statement here.

I note these words:

The open-shop drive of the laissez-faire period of the 1920's reduced trade-union membership from over 5,000,000 in 1920 to 3,500,000 in 1929. Wages declined and unemployment increased, while profits soared. As during the present period, the national income shifted more and more from consumers to profit takers. In 1929 the panic came.

I take it from those words that you feel that if, after World War I, in the early twenties, instead of reducing trade-union membership, we had given encouragement to that membership, given encouragement to strong unions that, in turn, would have insisted and been able to get a fair share of the national income for the industrial workers and their families, we would not have had the terrific decline in purchasing power that we did, and we would not have gone headlong into the depression of 1929; is that true?

MR. WHITNEY. Yes. The factors that brought on the 1929 panic are reappearing.

Senator HILL. That is what I was coming to next. That is exactly what I was coming to. I do not want to take up too much of your time, but as I listened to your statement I could not help but be impressed by the facts that you brought to bear here, the figures and statistics that you have presented, that we now have these warning signals.

MR. WHITNEY. That is correct.

Senator HILL. Is that right?

MR. WHITNEY. That is correct.

Senator HILL. We have these warning signals, that unless we do step in now to reverse the situation, we will have the same thing happen after World War II that we had after World War I; is that right?

MR. WHITNEY. I am afraid, Senator, that it is already beginning to happen.

Senator HILL. You are afraid it is already beginning to happen.

MR. WHITNEY. The share of national income is being shifted more and more to the profit takers and less and less to the consumers. The consumers today, as I understand it, are getting less of the national income, less share of the national income, than they got in 1939. I think that is a very frightening thing, and we are already beginning to get unemployment.

Senator HILL. Well, of course, the profit takers are relatively so small in number and, therefore, relatively so small from the standpoint of purchasing power as compared with the millions of industrial workers, and their families, in this country; is that not true?

MR. WHITNEY. That is correct.

Senator HILL. Well, just one other thing, and that is this: We are spending 15 billions of dollars this year on the Army, Navy, and Air Force. We will spend some 5 or 6 billion dollars very likely on foreign aid, at least 20 billions of dollars to meet the threat of communism.

Could there be anything that would get more encouragement to such a threat than for us to go into some kind of panic or economic tailspin here in this country?

MR. WHITNEY. That is a very vital point, and it might be said to be the whole thesis of my testimony. Why these monopolists will gladly spent 16 billions to stop communism, two or three thousand miles away, and will not even allow the workingmen to have the freedom that they have always exercised to protect our own system is beyond me.

Labor is not asking Congress for a dime in what we are sitting at this table for today. We are not asking you here today to give us any money. We are only asking you to give us freedom to cope with these giant monopolies that employ more people than some of our sovereign States have as citizens and own more wealth than the entire wealth of some of the sovereign States of the United States. We are asking to be free men against this threat.

Senator HILL. And you feel that in making this plea for your freedom, you plead for not only that which is to the best interests of the industrial worker, but that which is to the best interests of the Nation's economy and of the people of the Nation; is that right?

Mr. WHITNEY. In brief, I am pleading for the free-enterprise system, free enterprise, not private enterprise. I have found that private enterprise tends to become too private. [Laughter.]

Senator HILL. But you emphasize that word "free," do you not?

Mr. WHITNEY. I do. I do not think private monopoly can ever be free.

Senator HILL. Of course, when you speak of the free-enterprise system you mean property ownership, and you mean—

Mr. WHITNEY. Yes.

Senator HILL. And the profit motive, the recognized principles under the free-enterprise system; do you not?

Mr. WHITNEY. I even mean it should be so free that consumers and farmers may have their cooperatives, which is the highest form of free enterprise.

Senator HILL. Free enterprise. That is all, Mr. Chairman.

The CHAIRMAN. Senator Smith.

Senator SMITH. I want to ask Mr. Whitney one question.

Mr. Whitney, has the Railway Labor Act operated pretty successfully? I am interested in that. I never made an intimate study of it, but I am just wondering whether you think our labor legislation ought to be modeled on our Railway Labor Act, which was adopted some while ago, and I thought it operated very well. Is that your opinion?

Mr. WHITNEY. Well, over-all it has operated very successfully. It has two very serious shortcomings, in my opinion, and this is my personal opinion: The closed shop is outlawed, which I think is an outrage, and I think it is something which has encouraged the railroads to feel that the essential components of collective bargaining are delay.

One year we even had to threaten a Nation-wide strike before we could get the railroads in conference, and I deplore the delay that occurs under the Railway Labor Act. But that is more a criticism of those who refuse to enter into the spirit of collective bargaining, and I say, with all respect, Senator, that when you pass Bulwinkle-Reed bills, and perpetuate and enlarge and give the force of Government to these monopolies while, at the same time, you tie labor's hands, with an act like the Taft-Hartley Act, you are only aggravating the very thing that you think you are trying to remedy. I think that is why railroads feel that they can risk public opinion, and delay, and do all they can to keep away from collective bargaining.

Now, I think the Taft-Hartley Act encourages that. I know the Bulwinkle-Reed bill only perpetuates and glorifies and enlarges mo-



nopoly. It seems to me what we have been doing in this country for some time, we have been enlarging the monopolists.

I think we have been reading the newspapers too much. We have been reading these full-page ads; all the railroad workers want, if you read your newspapers, "is something for nothing; 44 ways to get something for nothing."

Well, Senator, you get on the end of a 200-car freight train and feel the slack run in and out and watch yourself thrown around and you will think maybe we want something besides "something for nothing." We want to preserve arms and limbs.

We do not have the money to publish full-page ads in reply to the ads which deceive the people to believe that labor is a monopoly and that business monopolies once were big and powerful but they have been purified, and now we have got to purify labor.

That is the spirit of the American press, and that is the spirit that put over the Taft-Hartley Act.

Senator SMITH. Not the spirit which motivated some of us.

Mr. WHITNEY. What I am arguing about is public opinion.

Senator SMITH. What I am saying is, if we cannot get the best that we can out of the Railway Labor Act, I want to get your feelings about the deficiencies. The closed shop—

Mr. WHITNEY. The outlawing of the closed shop.

Senator SMITH. I mean that is a very difficult question to solve adequately. We are trying to reach conclusions with regard to it.

You do not feel that the Interstate Commerce Commission, set up as it was to take care of the monopoly of transportation, which had to be a monopoly—and you could not have competition without wrecking your whole transportation system, that is the reason we set up the Interstate Commerce Commission, to fix rates, and so forth—you do not think they have been able to take care of that monopolistic feature?

Mr. WHITNEY. I wish I had a quotation by Richard Olney, who, I believe, was President Cleveland's Attorney General and, at the same time he made the statement he was general counsel for the Burlington Railroad, and the president of the Burlington Railroad was quite worried about this Interstate Commerce Commission. This is back in 1896, and Richard Olney told him to let it go. He said, "The Interstate Commerce Commission is a buffer between you and public opinion," and I am only paraphrasing, but I will be as fair as I can in giving the gist of it; he said, "It will protect you," and he said "The good thing about the Interstate Commerce Commission is that the older it gets the more protection it will give you." That has been our experience, and we think sometimes it is too old now, because it protects the railroads in nearly everything.

Senator SMITH. Well, of course, Mr. Whitney, the Interstate Commerce Commission does not attempt to get into management-labor disputes. That is an entirely different thing.

Mr. WHITNEY. No, but they do a lot of things which cause management-labor disputes; they aggravate the situation, I will put it that way.

Senator SMITH. Well, I have not made a close enough study to have an opinion on it one way or the other, but I am interested in your thoughts on how the Railway Labor Act has worked, and whether you feel that ought to be amended, at the same time, in dealing with these

other management-labor problems or whether you suggest here that you simply want to take the Railway Labor Act entirely outside of the reach of the Taft-Hartley Act, or any amendments we make in the Thomas bill.

Mr. WHITNEY. Yes, I am not authorized to request any changes in the Railway Labor Act. I am representing my organization——

Senator SMITH. I understand that.

Mr. WHITNEY. And we are not making any requests for any changes, but we do think that you should not complicate the Railway Labor Act. You exempted part of it, which indicates a desire to keep it outside.

Senator SMITH. Yes, I always felt we had tried to keep the Railway Labor Act outside as a different problem, a peculiar problem of its own.

Mr. WHITNEY. Yes, and why you left in title I is not clear to me. I understand other labor groups, other railway labor groups——

Senator SMITH. Not being one of the framers of the Thomas bill, I cannot answer your question. Perhaps Senator Thomas can. I am just interested in trying to get an over-all picture whereby we can really get to the heart of this thing and try to bring about better relationships between management and labor in trying to work these things out together.

I am very much interested in your statement, and it impresses me very strongly from your side.

Now, we heard testimony on the other side that we are in danger of generating more heat than light in these things. I am seeking light, and I would be interested to know, as my question points out, whether you think, generally speaking, the approach of the Railway Labor Act was a good approach.

I understand that was drafted with cooperation among the brotherhoods and the railroads.

Mr. WHITNEY. That is correct.

Senator SMITH. Whether you think those in the brotherhoods today who are not under the Railway Labor Act, should be brought under, and they should be taken away from the Taft-Hartley Act, or whatever other legislation we pass, so that we will cover all your brotherhoods that you feel are in the transportation business.

Mr. WHITNEY. Yes.

Senator SMITH. As I understand it, the busses today are not under the Railway Labor Act, and that is one thing you are referring to.

Mr. WHITNEY. Yes. We represent intercity busses, and that is one reason why we are here testifying.

However, if we did not have a member who came under the Taft-Hartley Act we would still be here protesting this vicious legislation. I say that in all kindness.

I think it is the most un-American, immoral, indecent piece of legislation that I have ever read, and I do not work too closely with its practical application, but I have certainly observed enough, and read enough, and to see the act itself, why, it is an even poorly written piece of legislation. [Laughter.]

I cannot understand it. I should have thought that if the NAM had been in your council here, they could have written a better piece themselves, and I do not believe that if the NAM had written it, it would have been any worse.

Senator SMITH. I am glad that you feel that the NAM did not write it.

Mr. WHITNEY. I did not say that.

Senator SMITH. It had nothing to do with it as far as I am concerned.

I just wanted to get your thought on the Railway Labor Act, and whether the approach is not in the right direction.

I think the chief thing you are troubled with in the Railway Labor Act is the closed-shop issue, and that is a very difficult thing to decide, looking at it from the over-all national standpoint.

Mr. WHITNEY. We had what we called percentage agreements. Employers wanted the closed shop just as much as we did, many employers.

Senator SMITH. That is true.

Mr. WHITNEY. That is the thing, a lot of people——

Senator SMITH. A lot of employers write me endorsing the closed shop. That is not a one-sided proposition at all. Lots of employers are satisfied with their set-up when they have a closed shop, and would like to see it continue.

Mr. WHITNEY. A lot of misunderstanding exists about this issue of the closed shop. You can argue against it all you please and say it is un-American and terrible, that is all right. But do not tell me and this gentleman that we cannot have it if we want it. That is all that is involved in the closed shop. Do not outlaw it.

Senator SMITH. Mr. Whitney, do you think if legislation permitted the closed shop we should provide for what is called open unions, so that the man who wants to work would have an opportunity to get into the union, the only avenue he would have for employment, and that should be the principle of open unions so that a man can join, and there should possibly be some regulation of what could be charged and so forth to protect the workers as free American citizens?

Mr. WHITNEY. You mean open——

Senator SMITH. Open in the sense that any qualified person who joins a union in order to get a job——

Mr. WHITNEY. Open in the sense that any stoolpigeon of the employer——

Senator SMITH. No; I do not want any stoolpigeon. I am not talking about that but when you are going to have free Americanism which you are urging so eloquently, and with which I am in agreement with you a hundred percent, do we not have a situation where if we are going to have a closed-shop principle in this country, whereby a man, who wants to earn a living will have access through the only channel he can get it, that is what I am talking about.

Mr. WHITNEY. When you get the National Association of Manufacturers, and the Association of American Railroads, and the American Medical Association to have open membership, come around and we will review it again as to whether unions should have it.

Senator SMITH. Well, now, wait a minute, that is not the issue.

Mr. WHITNEY. I believe workingmen ought to choose their associates in a union. I do not think Congress ought to lay down who we will have as members and who we will not.

Senator SMITH. I am thinking in terms of the free American citizen who wants to earn a living.

Mr. WHITNEY. So am I.



Senator SMITH. And the only way he can earn a living is by joining a closed union, and hence it seems to me that the doors of the union ought to be open to that fellow.

Mr. WHITNEY. How many men, Senator, do you know who are suffering or have suffered from a closed-shop situation?

Senator SMITH. I have had lots of workers come to me and say they do not like it, just as I have had employers come to me and say they do like it, so it is a 50-50 shot. It is a difficult kind of problem, so let us approach it in a fair way.

Mr. WHITNEY. When Mr. Mosher comes to you and tells you that his heart bleeds for the individual's rights, the worker's rights, that he wants the right to work, of course he was not talking that way back in 1932, and in the days following. What he is talking about is crushing the rights of 99 workers and the employer as against the 1 troublemaker.

Now, I do not think that Congress ought to be concerned about the 1 troublemaker in a closed-shop situation whereby they will destroy the rights of 99 workers, and the employer, and I think that is all there is to the closed shop—to the argument against the closed shop, I should say.

Senator SMITH. Well, I cannot quite agree with you that that is all there is to the argument, but I am glad to get your point of view.

Mr. WHITNEY. Well, if you will go part way, I will appreciate it. [Laughter.]

Senator SMITH. Mr. Chairman, I will not take any more time because I think my colleagues have some questions to ask.

The CHAIRMAN. Senator Donnell.

Senator DONNELL. Yes.

Mr. Chairman, has it been moved that the two statements, namely the summary prepared and presented by Mr. Whitney, and the testimony of A. F. Whitney, president, and the statistical exhibit, Whitney Exhibit No. 1, be incorporated in the record?

The CHAIRMAN. The summary, of course, is part of the record all ready.

Senator DONNELL. Then I respectfully move that the statement of Mr. A. F. Whitney of which there was a summary presented, and also, if Mr. Whitney desires it, the tabulation exhibit that accompanied it, be placed in the record.

The CHAIRMAN. Yes; they will be included in the record.

Mr. WHITNEY. Yes.

(The statistical information and statement referred to follow in turn:)

EXHIBIT No. 1.—*Strike benefit payments, legal and other expense of the Brotherhood of Railroad Trainmen on various bus properties, August 1947 to January 1949 (17 months)*

Name of bus property	Number of days on strike	Strike benefits paid	Legal and other expense	Combined cost
Santa Fe Trails (West) Transportation Co. ....	59	\$36,508.99	\$916.06	\$37,425.05
Maine Central Transportation Co. ....	18	4,008.95	1.35	4,010.30
Gibson Lines .....	67	14,450.00	45.79	14,495.79
Jacksonville Bus Lines .....	17	1,528.47	-----	1,528.47
Rockland Coaches .....	56	32,267.24	1,224.21	33,491.45
Texas, New Mexico & Oklahoma Coach Lines ..	64	28,033.06	4,429.46	32,462.52
Burbank (Calif.) City Lines .....	3	149.85	5.40	155.25
Cost .....	-----	116,946.56	6,622.27	123,568.83

EXHIBIT No. 1a.—*Strike benefit payments, legal fees, and expense of the Brotherhood of Railroad Trainmen, Cleveland, Ohio, on bus properties, January 1946 to July 1947 (19 months)*

Names of bus property	Number of days on strike	Strike benefits paid	Legal and other expense	Combined cost
1946:				
Santa Monica Municipal Bus Lines			\$900.00	\$900.00
Rockland Coaches	17	\$7,567.00		7,567.00
1947:				
Somerset Bus Co.	105	10,947.80		10,947.80
Oklahoma Transportation Co.	41	12,165.46	1,600.00	13,765.46
Burlington Transportation Co.	7	7,652.24	10.35	7,662.59
Pasadena City Lines	10	3,133.02		3,133.02
Glendale City Lines	10	1,499.85		1,499.85
Santa Fe Trails (West) Transportation Co. (paid before Aug. 1)		17,233.30		17,233.30
Cost		60,198.7	2,510.35	62,709.02

TESTIMONY OF A. F. WHITNEY, PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN,  
BEFORE THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE ON THE PROPOSED  
NATIONAL LABOR RELATIONS ACT OF 1949

The effort of many columnists and radio commenators to delay and, if possible, defeat the repeal of the Taft-Hartley Act, reminds me of the penetrating truth expressed by Henry George, "A great wrong dies hard."

We cannot fully comprehend the grave issues involved in this legislation without reflecting on the industrial history of America. Early efforts of working people to improve their wages, living standards, and working conditions were thwarted by judge-made law holding that trade-unions were conspiracies in restraint of trade. The commodity theory of labor prevailed for many years in this country. Then in 1914, the Congress enacted the Clayton Act, in which it declared: "The labor of a human being is not a commodity or article of commerce."

The decade following World War I experienced the most shameful era of laissez-faire economics that ever existed in this Nation, prior to enactment of the Taft-Hartley Act. The success of the open-shop drive of the 1920's resulted in the decline of trade-union membership from over 5,000,000 in 1920 to 3,500,000 in 1929. During this period of industrial prosperity, the workers did not participate in it, as hourly and weekly earnings remained almost stationary. Increased productivity, made possible by technological changes, was accompanied by output restrictions, and as a result employment was barely maintained. Unemployment ranged from a low of 10 percent in 1920 to a high of 27 percent in 1921, and averaged about 15 percent during the decade of the 1920's. Full employment of our physical and manpower resources was not a characteristic of the prosperity of this period.

Between 1929 and 1932, industrial employment declined 40 percent, while unemployment increased fourfold. Earnings for those who had work declined about 60 percent. The Wagner Act aided materially in reversing these harmful trends and it is not surprising therefore that the masses of the American workers have been seriously concerned over demands to modify, and, what is falsely called to "equalize," the Wagner Act, which propaganda program by the monopolists brought about enactment of the Taft-Hartley Act.

During the 1920's, profits soared and the percent of national income shifted more and more from consumers to profit-takers. Monopolies and cartels expanded, while trade-union membership declined. And then came the black autumn of 1929, with the financial crash which engulfed all segments of our economy.

Even before the election of Franklin D. Roosevelt in 1932, it was becoming apparent to the more reasonable employing and financial interests that our free economy could not survive unless something was done to restore purchasing power. Reasonable men realized that a stronger labor movement was indispensable to this end. In the closing period of the Herbert Hoover administration, the Norris-LaGuardia Anti-Injunction Act was enacted by Congress, and a grateful Nation applauded the end of the evil of government by injunction in the human relationships of industry.

Senator Robert F. Wagner, of New York, introduced the National Labor Relations Act of 1935. Hearings were held. There was a growing belief that a strong labor movement and the democratic processes of collective bargaining were essential to a restoration of living standards and mass purchasing power necessary to the survival of our free enterprise economy. In a world of growing dictatorships, that was America's democratic answer to the problems growing out of economic distress. Mr. H. M. Robertson, general counsel, Brown & Williamson Tobacco Corp., testified as follows in support of the Wagner Act:

"We felt that if the present economic system was to continue, it was inevitable that in the future there should be the organization of labor, and that real collective bargaining would eventually be made effective."

The Wagner Act became law in 1935, and for the first time in American history workers were guaranteed by statutory law the right, long exercised by employers, to form and join organizations of their own free choice. The National Labor Relations Act did not affect the employer who honestly recognized the democratic right of his employees to organize.

We then witnessed the genuine truth that "A great wrong dies hard." An army of keen lawyers, employed by the National Association of Manufacturers, solemnly declared that the Wagner Act was unconstitutional. However, in 1937 the United States Supreme Court declared the Wagner Act constitutional. But the battle for freedom for American workers had just begun. In 1937 and 1938, the United States Senate established a Committee on Oppressive Labor Practices.

As we listen to the NAM interests orate about violence in labor disputes and the alleged necessity for curbing labor and protecting the public interest, let us ponder the findings, based upon sworn testimony, of that Senate committee. It found that some large corporations maintained arsenals of industrial munitions. Thugs, guns, and explosives were used by these employers to crush labor's democratic rights. The Chicago Memorial Day massacre and the Little Steel murders of working men proved that great wrongs die hard. And, let me remind you, that the NAM has only but begrudgingly recognized the principle of collective bargaining in its official pronouncements in recent years.

The Wagner Act freed the American workers, improved living standards and assisted American business. Between 1935 and 1947, over 7,000,000 employees voted in representation elections, conducted by the National Labor Relations Board, with 80 percent voting in favor of union representation. But a small percentage of eligible industrial employees were protected by collective bargaining agreements in 1935, while almost half were covered by 1947. Those who orate about curbing the so-called labor monopoly should take note of the fact that only about one-fourth of the workers are organized in trade unions at this time.

The Wagner Act stimulated that righteous principle of collective bargaining and improved labor-management relations. Evidence of increased acceptance of collective bargaining under that act is furnished by strike statistics. In 1937, at the beginning of the effectiveness of the Wagner Act, 60 percent of the workers were involved in strikes which included the issue of union recognition. In 1946, only 12 percent were involved in such strikes. Employers could have avoided about half of the strikes under that act by recognizing the democratic right of their workers to organize.

There is such a thing as repeating an untruth so often that honest men come to believe it. One of the false claims was that the Wagner Act restricted the employers' freedom of expression. The falsity of this claim is proven by full-page newspaper ads, tiresome magazine articles, Nation-wide radio programs and millions of tricky pamphlets, all smearing organized labor, and condemning its leaders as selfish, dictatorial, troublemakers, bent upon getting something for nothing and wrecking the country, calculated to poison the minds of the public against labor unions, all of which constituted a conspiracy against the working people of the Nation.

Historically, it is unlawful for any man to threaten and intimidate a person in the exercise of his lawful rights, except that prior to the enactment of the Wagner Act, it apparently was not unlawful for an employer to threaten and intimidate his employee's democratic right to form and join labor organizations of his choice. The Wagner Act outlawed such employer intimidation.

I assert that there was no mandate from the people for the enactment of the Taft-Hartley Act, since but 39 percent of the people voted in the 1946 election that created the unforgettable Eightieth Congress.

Before we leave consideration of operations under the Wagner Act, let us inquire into the economic effects of this act. There was an increase in the organi-



zation of workers; wages increased, and employment improved, while national income going into corporate profits increased from 5.3 percent in 1935, the year the Wagner Act was enacted, to 12.2 percent in 1947. During the same period, there was a decrease from 65.3 percent to 63.0 percent in the share of the national income going to employees. From 1935 to 1947, the over-all increase in corporate profits after taxes was 687 percent, as compared with an increase in wages of 244 percent. Between 1945 and 1947, the increase in corporate profits after taxes was 108.0 percent. Certainly these economic facts do not demonstrate any need for shifting power from labor to the corporations and monopolists, which was the solemnly avowed purpose for the Taft-Hartley Act.

Had the Wagner Act served its purpose or outlived its usefulness at the time it was corrupted into the Taft-Hartley Act? As recently as May 1946, Gerard Reilly, former member of the National Labor Relations Board, and certainly one who cannot now be considered as prejudiced in favor of labor, said:

"You know as well as I do, that the process of converting the theory of collective bargaining into practice is far from complete, that the law of the land has yet to become the law of thousands of our industrial plants. As I see it, in the very near future, the acceptance and practice of collective bargaining in certain areas may well be put to as severe a test as any one of our other institutions have had to face. Let us not forget what happened after World War I, when the 'open shop' plan swept certain areas and left a wake of disrupted unionism."

We were well on our way to achieving the laudable goals of the Wagner Act by 1947, when the conspiracy against collective bargaining manifested itself in the form of the Taft-Hartley Act. Under the Wagner Act, a favorable climate for collective bargaining had been achieved. There were areas in our industrial economy that still needed to be organized. For instance, there is no reason why a clerk in a 10-cent store should have to depend upon her parents to supplement her small earnings in order to exist. In the interests of all the people, and in the interests of our free-enterprise economy, millions of unorganized workers should now be organized. If you will review the hearings on the Taft-Hartley Act, you will observe that it was from those employers with an antiunion record that the principal amount of testimony in favor of the Taft-Hartley Act was given. So impressive is this, that it must have been planned that way.

We come now to a consideration of the period following World War II. There were many strikes in that period. The presence of the Wagner Act or the absence of the Taft-Hartley Act was not responsible for these strikes. Only one living in a fool's paradise could reach that conclusion. After World War II, in addition to the usual confusion and economic disruption that arises out of going from a wartime to a peacetime economy, the take-home pay of millions of workers was harshly reduced as a result of loss of overtime pay and down-grading. This fact, alone, would naturally lead to industrial unrest. But there were other and unusual factors in this postwar economy. Corporations made millions of dollars out of the war. Monopolies grew in power and size. They were allowed to purchase Government war plants and equipment for a few cents on the dollar. They were riding a crest of wealth and arrogance unequalled in our history. But, to cap the climax, Congress enacted a law providing for "kick-backs" in corporate taxes, and they were allowed extravagant amortization write-offs of wartime purchases, which had the result of making it possible for corporations to enjoy substantially as much profits for idling as for producing. Thus, there was little incentive for employers to make fair and peaceful settlements with their employees.

Added to these economic stresses on workers, as against the cloistered and sheltered position of the employers, the economic soothsayers of the NAM and their voices in the Congress solemnly assured us that if we got rid of price control and allocations of scarce articles, prices would decline and there would be no scarcities. I need not detail the results of this false counseling. Workers were caught between run-away prices and reduced take-home wages. Congress failed to raise minimum wages. It did nothing about the serious housing shortage. It failed to secure workers in their health or their jobs. It enacted the old Charlie Chaplin stunt of standing on the board, while trying to pick it up. Many Members of the Congress decried strikes and joined the monopolists in the demand that labor be curbed. The infamous Taft-Hartley Act was the result.

The Taft-Hartley Act has not contributed to industrial peace or improved the basic soundness of our economy as the Wagner Act did during the most devastating economic catastrophe of our national history. Anyone acquainted with the economic injustices following World War II, would anticipate many strikes and much strife. However, the decline in strikes during the life of the Taft-Hartley

Act has been less favorable than the period following World War I, when the economic injustices which I have described were not present. Between 1920 and 1921, there was a 32-percent decline in strikes, as compared with the Taft-Hartley era of 1947 and 1948, when there was only a 15-percent decline.

We have been amused by the orations of some people to the effect that the Taft-Hartley Act has not enslaved anyone yet. With corporate profits soaring beyond anything that the most avaricious profiteer could have dreamed of, even during the peak of wartime profits, with corporations giving labor \$1 in wage increases and taking \$2 or \$3 in price increases, who can honestly assert that the Taft-Hartley Act, rather than staggering profits and prices, is the cause of decline in strikes during the life of that act?

The Taft-Hartley era is comparable to the open-shop era of the 1920's, and the economic trends of both eras have much in common. Now, as then, a larger and larger share of the national income is going to the profit takers. Corporate earnings are going up three times as much as consumer incomes. Shadows of the 1929 crash are lengthening. The fundamental principles of the Wagner National Labor Relations Act are as vital today as they were in the 1930's and following.

Monopolies are stronger and more threatening to our free-enterprise economy today than ever before in history. Strong, healthy labor unions are one effective economic counterinfluence to the evils of financial and industrial monopoly. Monopolists know this. That is why they have tried the stop-thief technique of calling organized labor a monopoly.

Gentlemen! Understand this: Those who describe as monopoly the efforts of working people to organize to improve their wages and working conditions, do not believe in the democratic principle of collective bargaining. They wish to destroy trade-unions as an effective means of perpetuating their monopolies. Anyone who does not understand that the Taft-Hartley Act is a conspiracy of the monopolists to crush free labor in America, understands neither the Taft-Hartley Act nor the serious monopoly problem with which this Nation is threatened. Those who most loudly proclaim the free-enterprise economic system are the ones who are doing most to wreck it, for we will never have free enterprise without free labor.

It was during the Hoover administration that the Norris-LaGuardia anti-injunction law was enacted by Congress, and government by injunction in the human relationships of industry was brought to a richly deserved ending. This cry to return to government by injunction in free America is disheartening. Again, it is only the monopolists and their voices in and out of Congress who want to go backward beyond Herbert Hoover and beyond the Clayton Act of 1914 and legislate on labor as though it were a commodity, and subject human beings to a sinful, un-American government by injunction.

In the field of labor legislation, we should never lose sight of the two fundamental facts of economic life. The incentive against nonproduction is far greater against labor, deprived of its income during a strike, than against management, which seldom misses a pay check or skips a meal. Secondly, to deprive labor of the right to strike, places it at the mercy of the industrialist and encourages the industrialist to become arrogant and ruthless. These facts exist, whether or not a worker may be employed in a so-called essential industry. With the scales of justice already heavily weighted against it, we must not further unbalance them by returning to government by injunction.

In the field of so-called essential industry you are reminded that the workers suffer the same inconveniences and hardships during a strike situation that employees in a nonessential industry who are on strike suffer, and both groups meet the same hardships and inconveniences during a strike situation that other citizens in the community do, plus the loss of wages during the life of the strike.

Why not turn our attention to the industrialists in the dispute? Surely no reasonable person will assume that labor is responsible for every strike, since many strikers are provoked by management, and labor after exhausting its efforts to correct the injustices must surrender or strike. Injunctions never solve labor disputes or promote justice. They usually protect the unjust in their injustices. The injunction in labor disputes is the weapon of the coward, and represents a form of hideous dictatorship. The purpose of the injunction in 90 percent of labor-management disputes is to blackjack labor, deny it its economic rights, and at the same time strengthen the position of ruthless management.

We should like remember that when we legislate against labor, we are legislating against all the American people. Economic justice is often stifled by the

rendition of unfair decisions against labor, because powerful industrialists and monopolists largely control the means of communication.

We should glorify the fact that for many years our people progressed and prospered in an atmosphere which prohibited government by injunction. For 17 months monopoly has been riding high under the Taft-Hartley Act, and the net profits of industry in 1948 reach \$21,000,000,000. Its reign of injustice is growing stronger and more threatening as the years pass by and its arrogant demand that the Congress reserve for it the injustices in the Taft-Hartley Act should be sternly denied, with a wholesome respect for the voice of the people who spoke on November 2, 1948.

Gentlemen of the committee, the country is not, nor has it been, threatened by the activity of organized labor, since it has contributed more in supporting the arm of democracy than any other group. It is not organized labor that threatens our way of life nor hampers production, so essential to our people. It is the mischief and the conspiracies of that totalitarian group who are selfishly, arrogantly withholding reasonable wages and appropriate working conditions from the millions of workers under the Taft-Hartley monstrosity, that have endangered our economy and caused a reign of unrest and confusion.

We have given careful consideration to S. 249, the proposed National Labor Relations Act of 1949. Its objectives in ridding the country of the Taft-Hartley Act are laudable. Its understanding of the human relationships in industry is reflected by its emphasis on voluntary procedures around the collective bargaining table, instead of compulsion by courts or mandatory arbitration boards. In proposing these ideals, it is of the essence of American democracy and freedom. Surely there never was a time in world history, when it was so vital to human welfare to demonstrate to a war-torn, confused, and troubled world that what it most needs is more, not less, democracy, more free enterprise, less monopoly and cartel power over the destiny of the people.

It is our understanding that sections 204 and 205 dealing with settlement of disputes arising under existing agreements, while stating obviously desirable objectives, do not carry with them the sanction of governmental compulsion; if they did, we should feel that our country was committing itself to compulsory arbitration. The provisions dealing with secondary boycotts are, in our judgment, so limited that they do not interfere with the legitimate objective of every trade-union to eliminate sweatshop and substandard competition; it is clear that, unlike the provisions of the Taft-Hartley Act, they do not compel union members to act as strikebreakers by force of law. The provisions dealing with jurisdictional disputes are carefully considered to reach the underlying problems, unlike the Taft-Hartley Act they provided ascertainable standards for decision of these problems and do not, as did Taft-Hartley, under the pretense of dealing with jurisdictional disputes, strike down legitimate efforts of trade-unions to preserve themselves against the competition of nonunion men.

We enthusiastically support the reaffirmation of the Norris-LaGuardia Act contained in this bill, and its elimination of the injunction as an employer weapon in labor disputes. The removal of the dangerous right to sue for breach of a collective agreement with its unlimited damages, the restoration of political freedom to the trade-union movement, the elimination of the insulting anti-Communist affidavit requirements, the removal of the NLRB general counsel as a labor czar, the ringing reaffirmation of the right of free collective bargaining on such matters as union security, the check-off, health and welfare funds and all other matters, the dropping of the stupidly devised union security elections—all these are matters which, in the light of our experience under the Taft-Hartley Act, are desirable and long overdue.

We must not be content to find a bill which will be better than the Taft-Hartley Act, for human ingenuity could not devise a worse law and a child could find a better one. We must find the right national labor policy. It is our judgment that the bill now presented places the maximum permissible limitations upon the freedom of the trade-union movement called for by the legitimate interest of employers, and that no bill should be adopted which goes further than this. With an amendment which I will explain, it is our hope that this bill will be speedily adopted to replace the noxious Taft-Hartley Act which was so thoroughly repudiated on November 2.

Before closing my testimony, I should like to call to your attention what I believe to be a rather serious mistake in S. 249. Please refer to section 405, page 21, "Exemption of Railway Labor Act." Only titles II and III of S. 249 are made inapplicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended. I can think of no good reason why title I



of the proposed law should not also be included in this exemption. Obviously that part of title I relating to repeal of the Taft-Hartley Act and establishing the National Labor Relations Act of 1935, and the creation of the Board thereunder, would have no appropriate application to the subject matter covered by the Railway Labor Act. Other parts of title I would seem to have no reasonable applicability to the subject matter covered by the Railway Labor Act. Secondary boycotts and jurisdictional disputes are not a problem in the railway industry and some of the language in title I of S. 249 might interfere with the established procedures under the Railway Labor Act.

Even if it were deemed desirable to make any changes in the provisions of the Railway Labor Act, such changes should be brought about by amending that act, rather than by confusing its terms with the legislation now under consideration by your committee. In other words, I propose that the same complete exemption of the subject matter covered by the Railway Labor Act that was provided for in the National Labor Relations Act of 1935 be included in S. 249.

Senator DONNELL. Mr. Whitney, if I may, I would like to ask you, and perhaps you stated this before I stepped in—I was a moment or so late—I observe that what you are doing today is presenting a summary of the testimony of Mr. A. F. Whitney.

Mr. WHITNEY. Yes, I did that because I understood the committee wanted it limited to 10 minutes.

Senator DONNELL. Very well.

Mr. A. F. Whitney is your uncle, is that right?

Mr. WHITNEY. No, he is and happens to be a second cousin of mine, out of no fault of his.

Senator DONNELL. Second cousin of yours. Why is it that Mr. Whitney is not himself here today, do you know?

Mr. WHITNEY. Why is he not here today?

Senator DONNELL. Yes.

Mr. WHITNEY. Well, Senator, Mr. Whitney came down here on February 8. I came with him. He was scheduled to testify, and it seemed that there was so much delay that he stayed around all day and went home, could not find a date, and he left me to testify, and I could not get in, and I went back home, and finally I was scheduled for now, and I am here.

Senator DONNELL. Did he know that you were scheduled for now?

Mr. WHITNEY. Oh, he has authorized me to present it. He could not take that much time.

Senator DONNELL. Why didn't he come back when the time was fixed at which you are now scheduled? Why did he not come down and why do we not have the benefit of his personal presence?

Mr. WHITNEY. I am not sure what his assignment is today, but it was not possible for him to be here.

Senator DONNELL. Where is he today?

Mr. WHITNEY. I am not sure. He has a traveling schedule; I think he is leaving tonight, but I am not sure. I would rather not state that.

Senator DONNELL. Leaving tonight for where?

Mr. WHITNEY. He authorized me, when he could not appear on February 8, he authorized me to handle it. He went on. He has plenty of other things to do.

Senator DONNELL. Of course, we have been favored by the presence of a good many gentlemen who are very busy. For instance, Mr. William Green of the American Federation of Labor was here on two different days, and I was curious to know why, on a matter of this great importance in which you testified that even though your union

did not have a man affected by the Taft-Hartley Act, the president of your union would not be here.

Mr. WHITNEY. Yes; we do have.

Senator DONNELL. I know, I know that you say that you did, but I understand you to say that even if you did not have, that you would be right down here protesting, just as you have been here this afternoon.

Mr. WHITNEY. Absolutely.

Senator DONNELL. I am still not quite clear; I will not press that further, but I am not quite clear why the president of the Brotherhood of Railroad Trainmen could not come here the same as other witnesses who likewise are busy people.

Mr. WHITNEY. I suppose my presence is in some respects like that of the representative of a corporation. Mr. A. F. Whitney, like a corporation president, hires lawyers to do some things for him. He cannot do it all.

Senator DONNELL. Are you a lawyer?

Mr. WHITNEY. I am. I am a member of the bar, not a practitioner.

Senator DONNELL. We have had a suggestion here that too many lawyers are around. I am not saying that there are. I am a lawyer myself. I would not dare say that. But are you the attorney for the union?

Senator HILL. Will the Senator yield there?

Senator DONNELL. Yes.

Senator HILL. May I suggest that the other day instead of the president of the United States Chamber of Commerce coming down, he sent one of the members of his board of directors down here, Mr. Steinkraus.

Senator DONNELL. That is true.

Senator HILL. That has happened time and time again.

Senator DONNELL. Are you a member of the board of directors of the Brotherhood of Railroad Trainmen?

Mr. WHITNEY. No, sir; I do not sit on the board of directors. I do educational and research work.

Senator DONNELL. You are the director of the educational and research bureau, and you do some legal work?

Mr. WHITNEY. Some, although I am not the general counsel.

Senator DONNELL. Do you mind just telling us, before you continue on, because there is going to—

The CHAIRMAN. Before you leave that, I am sure that Mr. Whitney was here at least 3 days and waiting, and we got a letter from him saying that the other Mr. Whitney would come, at least 2 weeks ago.

Mr. WHITNEY. That is correct.

The CHAIRMAN. So that I am pretty sure that everything was done that should be done by Mr. A. F. Whitney.

Senator DONNELL. Well, I do not doubt that Mr. Whitney used his very best judgment, but I think we are entitled to know the reason why the head of this great organization is not here, and if the reason is that it is inconvenient for him to come on account of his other business arrangements, we will so understand.

Mr. WHITNEY. Is it the policy of the committee, when a corporation sends its general counsel, to question why the general counsel comes instead of the president?

Senator DONNELL. I think we have a perfect right to make that inquiry.

Mr. WHITNEY. Absolutely. I just wondered if you did that as a matter of practice.

Senator DONNELL. I think I have a right to make that inquiry of you.

Mr. WHITNEY. I am flattered to feel that you would wish my boss was here. I kind of wish he was, too.

Senator DONNELL. I think it would be very nice if he were here. However, I do not mean to, in any sense, deprecate your ability. You presented it very clearly and very adequately.

By the way, who prepared the summary of A. F. Whitney which you have presented?

Mr. WHITNEY. I am guilty.

Senator DONNELL. Who prepared the statement itself? The statement of A. F. Whitney, president, who prepared that?

Mr. WHITNEY. Well, I collaborated with Mr. A. F. Whitney. We have other men in the office whom we have a regard for. It was read over, and suggestions were made. I would not say it was the product of any particular individual.

Senator DONNELL. Did Mr. A. F. Whitney dictate portions of the statement?

Mr. WHITNEY. Yes, he did.

Senator DONNELL. Would you be able to tell us in percentages just roughly what proportion of that statement he dictated?

Mr. WHITNEY. No, Senator. I would have to get the original of the rough draft he worked from, and I am pretty sure that has been destroyed. I did not realize that original copy could be so important.

Senator DONNELL. Who prepared the first rough draft?

Mr. WHITNEY. I think I prepared a work sheet. That is my job as a research man, to get facts and figures together.

Senator DONNELL. So, the first sheet that was prepared as a foundation for this testimony was prepared by yourself?

Mr. WHITNEY. That is correct.

Senator DONNELL. Very well, all right.

Now, Mr. Whitney, you recall the provision of the Taft-Hartley Act with respect to national emergencies, do you?

Mr. WHITNEY. Yes.

Senator DONNELL. And you recall the provisions in the pending bill on that same subject, I take it?

Mr. WHITNEY. Yes; I am generally familiar.

Senator DONNELL. I am inclined to understand from your statement that you are opposed to the injunction even in national emergencies; am I correct in that understanding?

Mr. WHITNEY. That is correct. I am at least as liberal as Herbert Hoover on that. He gave us the Norris-LaGuardia Act, and I think he was right in 1932, and I think he is right on that point.

Senator DONNELL. You do not know how he stands in regard to this injunction provision of the Taft-Hartley Act, do you, about injunctions?

Mr. WHITNEY. I do not know whether he would repudiate that part of his administration or not today.

Senator DONNELL. I do not think that part was ever in his administration, so far as I know, this particular matter on matters of na-



tional emergency. Of course, I realize the Norris-LaGuardia Act—I understand that, but I do not think there was any legislation one way or the other with respect specifically to national emergencies, and confining itself alone to that subject.

Mr. WHITNEY. Well, he signed the bill.

Senator DONNELL. Oh, yes, he signed the Norris-LaGuardia Act, there is no reason to doubt it, I take it. I note in your statement, and it is also noted in the statement of A. F. Whitney, that the labor injunction is the weapon of the coward.

Mr. WHITNEY. That is correct.

Senator DONNELL. Is that your statement or Mr. Whitney's?

Mr. WHITNEY. Both.

Senator DONNELL. You agree on this subject?

Mr. WHITNEY. Yes, we agree on all of this.

Senator DONNELL. You agree on both; yes, sir.

Now, you represent an organization here, the Brotherhood of Railroad Trainmen. How many members do you have, 216,000?

Mr. WHITNEY. In Canada, United States, Newfoundland.

Senator DONNELL. Yes. Was your organization connected in any way with the 1946 railroad strike?

Mr. WHITNEY. I think we were connected. I think that is true.

Senator DONNELL. As I remember it, there were several different organizations, all of which, I believe, but one or two, is that right, agreed to certain terms but those one or two declined to agree, and the strike resulted; is that correct?

Mr. WHITNEY. Well, Senator, that certainly is wrong and I think I have testified at least three times in which I have tried to explain that. I would not say you were present, Senator.

Senator DONNELL. Well, you did not testify to that effect today, did you?

Mr. WHITNEY. The other organizations had no more to do with the issues involved than you had, Senator. They had different solutions, arbitration or settlement or what not; they were clearly out of the picture, and that again shows how wrong you can be when you follow the newspapers in labor situations.

The newspapers all over the country said 18 organizations were good little boys, they settled. It was just two bad boys that held out.

Now, there is nothing further from the truth. These other 18 organizations were not in any way connected with the issues or with the situation that led to the 1946 strike, and I think that is very important, because it is very unfair to say that all other organizations settled and that two held out. Why, other organizations were not even involved in the rules, which constituted the major part of the controversy.

Senator DONNELL. You say 18 others besides the two to which you refer.

Mr. WHITNEY. I think that is what the newspaper said.

Senator DONNELL. Do you know?

Mr. WHITNEY. I think that is correct.

Senator DONNELL. Eighteen organizations that were not concerned with the particular subject at issue, out of which the strike arose, is that right?

Mr. WHITNEY. That is right. They had made a separate settlement.

Senator DONNELL. They had made separate settlements. The Brotherhood of Railroad Trainmen was one of the two which did not make a separate settlement.

Mr. WHITNEY. That is correct.

Senator DONNELL. And it was the Brotherhood of Railroad Trainmen and what other organizations that caused the strike of 2 days' duration to occur?

Mr. WHITNEY. Neither organization caused the strike. Wall Street bankers caused the strike.

Senator DONNELL. The bankers caused it?

Mr. WHITNEY. That is correct.

Senator DONNELL. Which two organizations did strike?

Mr. WHITNEY. Well, that is an entirely different question, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen.

Senator DONNELL. The locomotive engineers and the Brotherhood of Railroad Trainmen, that is the one which you represent?

Mr. WHITNEY. That is correct.

Senator DONNELL. Were you representing them at that time, 1946, I believe it was?

Mr. WHITNEY. I do not know what you mean. At that time I was director of the education and research bureau of the brotherhood.

Senator DONNELL. Well, you spoke of legal work. Did you do some legal work at that time?

Mr. WHITNEY. No, I do not think in connection with that dispute. I do not think I did.

Senator DONNELL. Now, that was the occasion, was it not, in 1946 when your union and the locomotive engineers' union declined to settle—I am not questioning which side was responsible, bankers or employees, but the two unions, yours and the locomotive engineers, were the two which declined to settle on the basis which management were agreeable to settling on, is that right?

Mr. WHITNEY. Well, I should think that would be a compliment to our organization. We settled on the basis—

Senator DONNELL. I am not talking about the compliment.

Mr. WHITNEY. If we settled on the basis of what the railroads wanted to settle on, we would not have shirts on our backs. Of course we did not settle on that basis.

Senator DONNELL. That is not what I asked you. The two organizations, the organization of locomotive engineers and the trainmen were the two which declined to enter into an agreement for settlement on the controversy on the basis—

Mr. WHITNEY. No, we were the two organizations—

Senator DONNELL. Wait a moment, on the basis which management were agreeable to settling on.

Mr. WHITNEY. We were the two organizations with which the banker-dominated railroads refused to settle.

Senator DONNELL. Well, you two organizations refused to settle; is that correct?

Mr. WHITNEY. That is correct.

Senator DONNELL. And the railroads of the country were tied up for 2 days, is that right?

Mr. WHITNEY. I heard they were.

Senator DONNELL. Well, you know they were.

Mr. WHITNEY. I was not traveling at that time.

Senator DONNELL. I do not think it is a very funny thing.

Mr. WHITNEY. I read it in the papers, and I am inherently suspicious of what I read in the papers.

Senator DONNELL. I observed that, and I observe also that this is a rather jocular subject.

Mr. WHITNEY. No, I think it is very serious.

Senator DONNELL. You are smiling at the time, and indicated that you were not riding. You said you were not riding, and so forth.

Mr. WHITNEY. Well, I was not, Senator; I was working in my office.

Senator DONNELL. I want to conduct this on a very serious basis, and I hope you will treat my questions as intended seriously. I am not scolding you.

Mr. WHITNEY. I did not mean levity; I meant only to say I was not even near a railroad train at the time of the strike. I did not see a train stop.

Senator DONNELL. No?

Mr. WHITNEY. And that is all I meant to say.

Senator DONNELL. Well, you are not denying that they did stop and that for two solid days?

Mr. WHITNEY. I think it is safe to say that that is correct.

Senator DONNELL. All over the United States, with almost no exceptions; is that right?

Mr. WHITNEY. I think that is correct.

Senator DONNELL. And, of course, that urgently and eminently affected the national welfare by reason of the stoppage of all the transportation which thus occurred; is that right?

Mr. WHITNEY. I think the national welfare is seriously affected when any workingman gets an injustice done to him.

Senator DONNELL. I was not talking about that, and you did not understand me to be talking about that, with all due respect.

Mr. WHITNEY. You see, Senator, you want me to testify here that two men or two organizations were wholly responsible for this difficulty, and I refuse to do that because I know where the trouble was.

Senator DONNELL. You think the trouble was in Wall Street and the bankers.

Mr. WHITNEY. That is correct; Wall Street-dominated.

Senator DONNELL. I am not arguing that point with you. My point is that, whosever fault it was, we had a 2-day railroad strike which threatened the public welfare, that is correct, is it not?

Mr. WHITNEY. Well, I think that is correct; yes.

Senator DONNELL. Very well, that is what I wanted to get at.

Mr. WHITNEY. It is very deplorable, a very deplorable situation. I deplore the necessity of any strife, if that is what you want.

Senator DONNELL. I think we all feel that way.

Now, Mr. Whitney, that was the time the President of the United States called Congress together in joint session and the time when he made some announcement in regard to possible drafting of men to take over the railroads, is it not?

Mr. WHITNEY. I think that is correct.

Senator DONNELL. Well, you know it is right, do you not?

Mr. WHITNEY. That is correct.



Senator DONNELL. Why, certainly. Obviously, I take it you would agree that the President of the United States would not call Congress together in joint session and suggest the idea of drafting men to conduct the railroads unless he thought that the national welfare was involved in the prospective strike and would be seriously endangered were that strike to continue longer. You would agree to that, would you not?

Mr. WHITNEY. Well, I do not like to try to testify what was in the mind of the President. I know I have heard a lot of Congressmen, and I think maybe some Senators say that a lot of people down here in Washington lost their heads during that time when the House voted, all but 13, I think to draft men into the Army. But I wish we could talk about injunctions. I think they are about the same thing.

Senator DONNELL. We will come to it in about a minute and a half; that is just what I am coming to. I am glad you want to talk about that.

Mr. WHITNEY. I am just impatient, Senator.

Senator DONNELL. How long did your union stay out on that strike, and how many men were there out of your membership on that strike, 1946?

Mr. WHITNEY. Well, I do not have those specific figures.

Senator DONNELL. Approximately?

Mr. WHITNEY. I think the strike started on Thursday, if I remember, and ended on Saturday, but that is only an approximate—

Senator DONNELL. That is your best recollection?

Mr. WHITNEY. I think that is correct. There are probably plenty of people to verify it if I am wrong.

Senator DONNELL. Approximately how many of your men, Brotherhood of Railroad Trainmen were out on strike?

Mr. WHITNEY. Well, I doubt if there are any figures available. There were probably men off at the time. As far as I know our men voted, I think, 98 almost 99 percent for the strike.

Senator DONNELL. Yes.

Mr. WHITNEY. And they were completely loyal, and we do not have scabs in our organization, I am glad to say.

Senator DONNELL. Well, are practically all of your 216,000 members engaged in the actual operation of the train operations?

Mr. WHITNEY. No; there are some who—well, quite a few of them are in Canada, as you know.

Senator DONNELL. How many are there in this country, the United States, of the 216,000?

Mr. WHITNEY. Well, I think there are about 20,000 Canadian members and about 8,000 bus operators.

Senator DONNELL. That will be 188,000, as I figure it in my head.

Mr. WHITNEY. Yes; I think you are right.

Senator DONNELL. 188,000 other persons, that is to say other persons engaged in the operation of railroad facilities, is that right?

Mr. WHITNEY. Well, they are not all necessarily in service.

Senator DONNELL. I understand.

Mr. WHITNEY. And certainly not all at one time.

Senator DONNELL. I realize that.

Mr. WHITNEY. Even at a period of time.

Senator DONNELL. But over a period of 2 days, if that was the time the railroads were closed down, there were conservatively 150,000 to

175,000 of your men in the United States who were on strike, is that right?

Mr. WHITNEY. Well, I think that is probably a fair speculation, but I would rather to testify to facts in my knowledge, and I do not know how many men went out on strike.

Senator DONNELL. I am not asking you for an exact statement, but you have been with this organization, and you would know generally speaking and I wanted to get an approximate picture.

Now, let us go on down the line for about 2 more years.

In 1948 we had some trouble with the railroads, did we not, the railroad strike in 1948, May of 1948?

Mr. WHITNEY. I do not know what you have reference to.

Senator DONNELL. You do not know what we have reference to?

Mr. WHITNEY. No.

Senator DONNELL. Did your members threaten a strike in May of 1948, members of your organization?

Mr. WHITNEY. Well, Senator, I am not in the grievance department, and it may strike you as funny that I would not know about it, but I do not necessarily know about every time a general committee and a railroad break off.

Senator DONNELL. Now, it may well be that your organization did not have any of these men, and I want to ask you about it. Does railroad brotherhood have engine and service employees in it?

Mr. WHITNEY. Well, we have yardmen; switch tenders and yardmen, yes, but we do not have engine service. Did you say "engine"?

Senator DONNELL. There are some railroad engine service employees and some yardmen who are not in your union; is that right; and some are in your union?

Mr. WHITNEY. We do not represent engineers and firemen at all.

Senator DONNELL. You do not represent engineers and firemen?

Mr. WHITNEY. No.

Senator DONNELL. Let me just read you this. You are familiar with the National Mediation Board under the Railroad Act; are you not?

Mr. WHITNEY. Yes.

Senator DONNELL. You referred, in answer to Senator Smith, to the Railroad Act. Let me read a little from the Fourteenth Annual Report of the National Mediation Board for the fiscal year ended June 30, 1948. This report was transmitted to the Senate and House of Representatives under date of November 1, 1948, by Frank P. Douglass, Chairman of the National Mediation Board.

You know Mr. Douglass, do you?

Mr. WHITNEY. Yes.

Senator DONNELL. He is and was at that time the chairman of that Board?

Mr. WHITNEY. That is correct.

Senator DONNELL. Let me read this to you and see if it refreshes your memory of what happened back in May of 1948. He says this, and I will start at the beginning of the paragraph. It is referring back to an earlier paragraph, and he makes this statement, that some preceding statement—

should not be interpreted to minimize the seriousness of the few instances where the law failed to prevent interruptions to service. Thus in the Nation-wide dispute over wages and rules involving railroad engine service employees

and yardmen, all of these steps prescribed by the law were exhausted without a settlement being made. After declining to accept recommendations for settlement by a Presidential emergency board, the organizations set a strike date for 6 a. m. May 11, 1948. To forestall this, extraordinary measures were invoked to prevent a Nation-wide tieup in rail transportation.

The president issued an Executive order.

That is recorded as Executive order No. 9957 of May 10, 1948; that is in the footnote.

The President issued an Executive order whereby operation of the railroads was taken over by the Secretary of the Army. In taking this action the President called upon every railroad worker to cooperate with the Government by remaining on duty, and stated "it is essential to the public health and to the public welfare generally that every possible step be taken by the Government to assure to the fullest possible extent continuous and uninterrupted transportation service. A strike on our railroads would be a Nation-wide tragedy with world-wide repercussions."

Notwithstanding the above action—

that would be the Executive order by which the operations of the railroads were taken over by the Secretary of the Army and the call of the President upon every railroad worker to cooperate with the Government by remaining on duty—the report proceeds, then:

Notwithstanding the above action, the threatened strike order was not canceled. Whereupon, the office of the Attorney General applied to the United States District Court for the District of Columbia for a restraining order. A temporary order was granted on May 10, and as a result the threatened strike was called off. Following hearings, a preliminary injunction was issued by the court on June 11, and a permanent injunction was issued on July 2, 1948.

Now, do you remember those circumstances?

Mr. WHITNEY. I know now what you are talking about. We were not involved in that at all. We settled in October of 1947; we were not involved in that.

Senator DONNELL. I take it, your union was not involved in it but that did happen just as recited in the report of the National Mediation Board from which I read. You remember that, do you not?

Mr. WHITNEY. Yes; that is the report.

Senator DONNELL. And you remember those facts to have occurred as stated in this report?

Mr. WHITNEY. No; I do not question the report's accuracy.

Senator DONNELL. That is right.

Mr. WHITNEY. I might say, Senator, that the so-called interruptions—I do not know what your purpose is. In Russia they do not have strikes. I do not know whether that is suggested by all that or not. I still think freedom is more important than interruptions to service.

Senator DONNELL. Yes. I was not talking about Russia, I was talking about the situation we have in our country where notwithstanding this, this action by the President in taking over the railroads or causing them to be taken over by the Secretary of the Army, and notwithstanding the call by the President of the United States upon every railroad worker to cooperate with the Government by remaining on duty, notwithstanding all that, to quote this report from which I have read, "The Threatened strike order was not canceled. Now, that is the situation to which I called your attention.

It appears here that the office of the Attorney General, as I have indicated, applied to the United States district court for a restraining order. You think that action by the Attorney General was the weapon



of a coward or do you think, in view of filing of that suit for an injunction, he was taking a cowardly attitude?

Mr. WHITNEY. I think when you have two men in a quarrel and you tie the hands of one man behind his back, it is a cowardly act, and that is what I mean by an injunction. I am not personally familiar with all the facts there, but an injunction, an injunction to me, when it is applied to human labor, when you put all the onus on one side and tie their hands behind their backs and tell the employer to go to it, is cowardly and the very fact that the employer knows that the Government stands there with that club, deters the employer from settling. That is the thing that I think you ought to consider.

In other words, as I said in my testimony, let us think in terms of the provokers and not eternally in terms of putting legal restrictions on the provoked at the behest of the provokers.

Senator DONNELL. Well, the point I was asking you about was not that, Mr. Whitney; it was whether or not you think in his application for this restraining order the Attorney General was playing the part of a coward and asking for the weapon of a coward. Is that what you thought?

Mr. WHITNEY. I think the injunction in a labor dispute—

Senator DONNELL. Is the weapon of the coward.

Mr. WHITNEY. Is a cowardly act.

Senator DONNELL. A cowardly act.

Mr. WHITNEY. Just like I think the Taft-Hartley Act is a slave-labor act.

Senator DONNELL. Yes; I know you have told many people of that, and your organization—

Mr. WHITNEY. Not as many as I would like to have told.

Senator DONNELL. All right.

Mr. WHITNEY. Let me tell you why the Taft-Hartley Act is a slave-labor act.

Senator DONNELL. I am perfectly willing for you to do that and I am going to stop so that you can, but I do not want to be diverted and have to think about the rest of this series of questions, so I will come back to those in a moment.

Mr. WHITNEY. All right.

Senator DONNELL. Go right ahead and tell us why you think the Taft-Hartley Act is a slave-labor act.

Mr. WHITNEY. If you, by law, such as the Taft-Hartley law, give the employer the club that leads him to know that he does not really have to settle, then workers are either going to take what the employer offers or they are going to starve, and to me that is industrial slavery, and I submit that the Taft-Hartley Act has been properly described as a slave-labor act because it is leading to that thing.

Senator DONNELL. Have you completed your statement on that?

Mr. WHITNEY. Well, yes.

Senator DONNELL. Very well.

Mr. WHITNEY. I think that is it.

Senator DONNELL. Now, Mr. Whitney, at any rate, in this particular case to which I have referred—I will take it combining two questions—in the first place, the 1946 incidents that we have gone over here, this 2-day strike in which your union and another union participated, were an illustration of the fact that it is possible in this country

for us to have a strike involving the public welfare and creating a grave public emergency.

Mr. WHITNEY. Stating it another way, Senator, we are still a free country.

Senator DONNELL. Well, I am not passing on that for the moment. My point is this, as you understand, I think—and I hope I make it clear—that it is possible that even in this country, even in America, for labor unions like yours and the other union to tie the railroad business of this country up by injunctions notwithstanding the very earnest efforts of the President and his associates to prevent the stoppage.

Mr. WHITNEY. You mean by strikes; you said by injunctions.

Senator DONNELL. I should have said by strikes; yes, sir. I say it is possible to do that.

Mr. WHITNEY. I understand that Senator Taft has assured us that even his act does not outlaw strikes, so I guess we are supposed to be free to strike.

Senator DONNELL. Really, Mr. Whitney, I would like to have an answer to the question instead of a comment.

Mr. WHITNEY. I thought I answered it.

Senator DONNELL. No; I did not ask you what Senator Taft said.

Mr. WHITNEY. I wanted to use the force of his authority was all.

Senator DONNELL. Very well, but that was not what I asked you, and I think you understood it was not what I asked you.

I was asking you whether or not in this country it is possible for a Nation-wide transportation strike to occur, and if it is not true that within the last 3 years it did occur and was participated in by the union of which you are the director of education.

Mr. WHITNEY. Certainly. I hope that we have not lost the right to strike in free America, although I think we have got to the point where scabs have more rights in a strike situation than decent working-men have.

We are supposed to still be free to strike, but under the Taft-Hartley Act scabs can come in and you take a vote by the Government of the United States and the decent men are denied the right to vote and the scabs vote; that is what I am talking about, the basic immorality of the Taft-Hartley Act. Of course, we have the right to strike, I hope.

Senator DONNELL. You are of the opinion, are you, that there is an absolutely unlimited right to strike; is that correct?

Mr. WHITNEY. Well, I would have to have your definition of "unlimited."

Senator DONNELL. I mean without any limitations or restrictions.

Mr. WHITNEY. Well, railroad workers have restrictions on them in their rights to strike.

Senator DONNELL. Well, do you agree with the view as expressed by the Supreme Court of the United States, as said Mr. Justice Brandeis in the case of *Dorchey v. Kansas* (272 U. S.):

Neither the common law nor the fourteenth amendment confers the absolute right to strike.

Do you agree with that statement?

Mr. WHITNEY. Neither the common law nor what?

Senator DONNELL. Nor the fourteenth amendment to the Constitution of the United States.

Mr. WHITNEY. Well, I think that is true. I think that is why we have gone out of the Dark Ages, and we have had the Norris-La-Guardia Act and the Clayton Act. Sure, in the early days, workingmen who joined organizations were considered to be conspiring in restraint of trade. The common law never protected them; that is correct.

Senator DONNELL. So, in common law, you do not contend that there was an absolute right to strike?

Mr. WHITNEY. Apparently not.

Senator DONNELL. Very well.

Mr. WHITNEY. Workers were never free, anyway; they were never really free, until the Wagner Act of 1935.

Senator DONNELL. Mr. Whitney, inasmuch as we have had within the last 3 years, first, a strike which actually occurred for 2 days in this country, participated in by your own union, a Nation-wide railroad strike, and in the second place, a threatened strike which was not stopped, the order for which was not canceled, until a temporary order was issued by the United States district court, do you not recognize that there is a grave public danger which must be safeguarded against by some type of legislation?

Mr. WHITNEY. I certainly do, Senator, and I wish more people would recognize that when workingmen strike they are desperate. The newspapers would have you believe the workingmen just love to go on a strike. They would rather go out on a strike any time than go fishing. That is the way the press of this country has tried to corrupt thinking.

Workingmen do not want to strike, but what is the answer, Senator? Are we going to copy the Nazis and Russia and outlaw strikes in this country?

Senator DONNELL. No.

Mr. WHITNEY. Or are you going to pass more Bulwinkle-Reed bills to make these monopolies that refuse to give justice stronger and stronger?

Senator DONNELL. I think you are exactly correct in your statement to the effect that laboring men generally do not want to strike, generally speaking. I do not mean to say now that they want to abandon the right in appropriate circumstances to strike, nor do I think they should abandon that, but the point occurs to me in connection with your statement that although the great rank and file of labor-union men are not anxious to strike and lose their wages and put themselves in inconvenient and unpopular positions and do injure themselves and the public, for some reasons the heads of some unions have found it advisable to strike.

Now, they have done it, I take it, on strike votes. I assume that your organization had a strike vote; did it not?

Mr. WHITNEY. Absolutely; 98½ percent of the men.

Senator DONNELL. 98½ percent; very well.

Mr. WHITNEY. I would not want to let the record indicate that I agree with you that the rank and file do not want to strike but that it is just these union leaders that cause the strikes. If that is what you are suggesting, I say that you are just as wrong there as you were when you passed the Taft-Hartley Act and said that the workingmen do not want the closed shop, but that it was just the union bosses that want security.



Yet you have found by Government-conducted elections that over 90 percent of the workers have voted for these union securities, and they have been denied their fundamental right of freedom of contract to vote for the closed shop.

Senator, one of the biggest mistakes that a lot of people in high places are making is the assumption that union leaders are somehow more radical than the rank and file. Not at all. Do not believe that.

Our men vote for a strike always by almost unanimous vote. Of course, the NAM would tell you it is because it is not a free election. Well, any time that the corporations of this country give their minority stockholders the same rights, the same democratic rights that every member of the Brotherhood of Railroad Trainmen has, we will have a new day in freedom.

Senator DONNELL. Well, I was following up your own statement a few minutes ago to the effect that the newspapers would have you believe that the laboring men are just itching and anxious to strike, and I thought you said that they do not want to strike.

Mr. WHITNEY. Neither do their leaders want to strike.

Senator DONNELL. Perhaps not. You would be in a much better position than I to judge that, but the fact is, Mr. Whitney, as we have indicated here, that it is not only possible for a Nation-wide emergency strike to occur, but one has occurred in 1946 and another one was not stopped until the injunctive arm of the court of equity required it to be stopped, and there cannot be any dispute about the facts, I take it.

Now I wanted to ask you this question. The Thomas bill, the only thing it calls for—do you have a copy of it there?

Mr. WHITNEY. I thought I had.

Senator DONNELL. Would you give him a copy, if he does not have it?

Mr. WHITNEY. I have it.

Senator DONNELL. If you turn over to page 17 you will observe there the provision relative to national emergencies. You will observe in section 301 that—

Whenever the President finds that a national emergency is threatened or exists, because a stoppage of work has resulted or threatens to result from a labor dispute, including the expiration of a collective-bargaining agreement in a vital industry which affects the public interest, he shall issue a proclamation to that effect and call upon the parties to the dispute to refrain from a stoppage of work, or if such stoppage has occurred, to resume work and operations in the public interest.

Now Mr. Whitney, back in 1946 when the President came over and had the joint session of Congress and told them his view in favor of the actual drafting of men to operate the railroads, it certainly is true that a mere calling upon the parties to refrain from a stoppage of work by the President would not have caused the stoppage to be deferred. That is true, is it not, because he did call upon them, I think, and they did not stop the strike.

Mr. WHITNEY. Of course—

Senator DONNELL. Is that true or not?

Mr. WHITNEY. No; that is not true. It depends on a given strike situation.

Senator DONNELL. I am talking about 1946.

Mr. WHITNEY. Yes. Well, let me talk about 1943 to illustrate your conclusion is wrong.

Senator DONNELL. Just a moment; I did not ask you about 1943.

Mr. WHITNEY. My answer is "No."

Senator DONNELL. Your answer is no what?

Mr. WHITNEY. Your conclusion is wrong.

Senator DONNELL. My conclusion is wrong?

Mr. WHITNEY. Absolutely.

Senator DONNELL. Let's see about that conclusion. The fact is that in 1946 the President certainly did not only by the force of his position but by calling Congress together and by even threatening to draft men into the work, he was not able to secure a stoppage of that strike and the strike occurred. That is true, is it not?

Mr. WHITNEY. Well, but of course you are making a very fragmentary statement of the facts and asking me to jump to a conclusion based upon inadequate facts.

Senator DONNELL. If you want to add to the facts, put them in, but is not everything I have said true, and is it not a fact that the strike did occur notwithstanding that the President used the influence of his office, used the collective power of Congress in at least its moral attitude, used his own threat of drafting men, used all that and still the strike occurred. Is that true?

Mr. WHITNEY. I might be very generous——

Senator DONNELL. Is that true?

Mr. WHITNEY. It is true, but not the whole truth.

Senator DONNELL. Go ahead and tell us what the rest of it is.

Mr. WHITNEY. In 1943 the President called the parties in that strike situation and he said, "Now I am going to ask that you people accept me as an arbitrator." Mr. A. F. Whitney, the president of the Brotherhood of Railroad Trainmen, immediately accepted, and the parties accepted, and it was arbitrated and there was no strike; but in 1946 there was no effort to settle anything except on the railroad terms, and that is the injunction way of doing things and it never reaches justice, and it only aggravates men to the point where you try to aggravate them into a very serious condition, and I think that is what you ought to consider. Do not worry about the merits of the workers in the 1946 situation.

Senator DONNELL. There was no injunction asked for or granted in 1946. That is correct; is it not?

Mr. WHITNEY. That is right.

Senator DONNELL. All right.

Mr. WHITNEY. We even agreed to settle on the Emergency Board's terms.

Senator DONNELL. That is you settled——

Mr. WHITNEY. But we were not allowed to do that.

Senator DONNELL. You settled after you had struck for 2 days and after vast popular indignation occurred all over the United States.

Mr. WHITNEY. I think it was around the first day we offered—I am not just sure of the date—to accept the Emergency Board's settlement, though it was a grievous wrong to our members. In the interests of peace we did offer to settle.

Senator DONNELL. You kept the railroads tied up for 2 days before you did settle. That is true, is it not?

Mr. WHITNEY. That is true, Senator, but the only alternative to that is to outlaw strikes and follow Russia and Hitler.

Senator DONNELL. Now, just let me read a little further here in this Thomas bill. A very interesting point was made here on Saturday by Mr. Christensen, a lawyer of Chicago. Maybe you know Mr. Christensen, of—

Mr. WHITNEY. I think I know of him.

Senator DONNELL. Now, after section 301, which I read to you here about the President calling upon the parties to refrain from a stoppage of work and if/or such stoppages occur resume work in the public interest, then you will observe section 302 provides for the appointment by the President of an emergency board, and it is to go to work, and it has to, within not more than 25 days after the issue of the President's proclamation, make a report to the President unless the time is extended by agreement of the parties and the approval of the Board, and so forth and so on.

Then it provides, and I call your attention to this, and I would like for you really as a lawyer as well as an educational worker here with your union, to read with me this next section and get your judgment on this.

This is section (c), on page 18, line 7.

Mr. WHITNEY. I have it.

Senator DONNELL (reading) :

After a Presidential proclamation has been issued under section 301—  
now that is the proclamation to the effect that the President finds that a national emergency is threatened, et cetera—

After a Presidential proclamation has been issued under section 301 and until 25 days have elapsed after the report has been made by the Board appointed under this section—

now that is until 30 days then after he has issued that proclamation, then it goes ahead—

the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute, unless a change therein is agreed to by the parties.

Now, Mr. Christensen made this point. He says there is a lot of talk about the Taft-Hartley Act being a slave labor act, although the Taft-Hartley Act says expressly in so many words that nothing contained in it shall be so interpreted as to require any man to work. Mr. Christensen says that this is actually slave labor because it says "after the parties" have issued this report, and so forth, and 30 days have elapsed, not more than that, then the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute, unless a change therein is agreed to by the parties.

What do you think of Mr. Christensen's point that there is a mandatory requirement making it a legal requirement of the parties to the dispute, and I quote, "to continue or resume work and operations."

Now, Mr. Christensen takes the view that that is slave labor. What do you think of that?

Mr. WHITNEY. I would be inclined to think that anything which Mr. Christensen thought was bad for labor would probably be pretty good for labor. I do not think the railroad workers of this country are slaves, do you?



Senator DONNELL. That really was not the question I was asking.

Mr. WHITNEY. But we have been operating under similar language since 1926, and we think we are reasonably free.

Senator DONNELL. Yes; but what I am asking you about is a provision here which says in so many words "The parties to the dispute"—now that is the men, is it not, and the railroads, or we will leave out the railroads because this is not going to apply to railroads, but take the coal strike, for instance—

the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately—  
et cetera.

Is that not a mandatory requirement making it the legal duty of the parties to the dispute to continue or resume work, and is that not a far greater approach to involuntary servitude than anything in the Taft-Hartley Act which by the very terms of it says that nothing therein construed shall require anybody to work. What do you think of that point?

Mr. WHITNEY. Well, I think, Senator, that Mr. Christensen is taking himself entirely too seriously. We have had the Taft-Hartley Act for nearly 2 years, and this is only 30 days, so at least in quantum it would not be quite so bad. I think Mr. Christensen is trying to scare somebody.

Senator DONNELL. That is that—

Mr. WHITNEY. I think Mr. Christensen is just trying to scare somebody. Do you mean that you think you ought to weaken this language?

Senator DONNELL. Oh, no; I am in favor of vastly strengthening it. I think that this is infinitesimal, but I am saying this, Mr. Whitney. This provides that the parties to the dispute shall continue or resume work.

I would say eliminate that, take it out of the act entirely, but put in a provision under which a court can enjoin, just as in the case of the Taft-Hartley Act, the strike, the concerted effort, the strike or for that matter the lock-out on the other side if it is a case of action by management.

I would eliminate this language that Mr. Christensen refers to, entirely, but I would put in the same thing that the Taft-Hartley Act has giving the power to the courts to prevent a concerted strike or lock-out.

Mr. WHITNEY. Well, Senator, I am trying very hard to understand you, and I do not want to be facetious.

Senator DONNELL. I know you do not.

Mr. WHITNEY. As I understand you, you are inclined to feel with Mr. Christensen that this is slave labor and you say you want to make it vastly stronger. Now just what is it you want.

Senator DONNELL. I will tell you what I want. I want to make it vastly stronger in this way: First, this Thomas bill provides nothing in the nature of teeth, nothing in the way of compulsion, although it makes it the legal duty of the parties to continue or resume work. There is not any enforcement of it provided herein. It is a mere slap on the wrist saying "you shall continue or resume operations."

That may be the answer to Mr. Christensen's point, but what I say is that I advocate going back to the provisions of the Taft-Hartley Act where you can go into court and get an injunction restraining the concerted action known as the strike or conversely, the lock-out.

Mr. WHITNEY. I think, Senator, I do not know how much experience you have had in labor relations, but I am telling you that you are not entering into the spirit that ought to prevail in human relationships of industry when you talk of teeth. I think we had better start using the organs above our teeth on this thing and quit trying to put teeth into the worker. Let's put some teeth into the monopolies. That is what I say, Senator.

Senator DONNELL. Let us leave out the word "teeth" if you have objection to teeth.

Mr. WHITNEY. No; I think you chose the word very well, but I protest the principle, not the manner of expression.

Senator DONNELL. I would say we have got to the point where instead of a mere slap on the wrist, with an ostensible making of this compulsory, with no provision for enforcement—I am going to leave out the word "teeth" if that in any sense implies the word "ferocity"—I think we ought to have a recourse to the courts of our country to preserve the national welfare against an emergency situation which has developed twice in the last 3 years.

Mr. WHITNEY. Well, Senator, with the entire Wagner Act and the Taft-Hartley Act doing nothing but a gentle tap on the wrist of the employer, 2 years after he has committed an offense, I am surprised that you would want to come out now and complain because somebody wants to do nothing worse to labor than has been done to the employers.

Remember, Senator, the Wagner Act never had any real existence to an employer who was honest and honorable with the workers, who allowed them the same privileges he has to join unions. The Wagner Act never existed for that type of an employer.

With no law any stronger than a mere tap on the wrist 18 months after the offense is committed by the employer, and you talk to me about teeth and wanting to get tough with labor in America, but we still are passing Bulwinkle-Reed bills. We are still building monopolies in this country. We are still trying to crush labor.

We are still giving the profits more and more of the share of the national income, and the labor less and less, and still you say we have got to get some teeth to keep labor down.

There is nothing in the economic picture that shows that labor's strength should be curbed, but there is plenty that shows that the monopolies should be curbed, and I wish you would point the teeth at the people that really provoke these things.

How did we live 160 or more years in this country without national legislation for injunctions? What about police powers? What about the rights of the States in this picture, Senator? Why do you have to strap us with Federal laws, tell us we cannot have freedom of contract?

Why do you have to pass these laws and then put in a provision and say, "If there is anything that we have not thought of that is worse for labor, then the States can take over and carry on."

I still say that labor has a right to protest the essential immorality and indecency of the Taft-Hartley Act, and so many things you have said seem to me to be only an appeal to preserve the Taft-Hartley Act that I am made very uncomfortable by your trying to get me to accept your conclusions. I do not think you can do it, Senator.

Senator DONNELL. I know there would be some difficulty in doing that. I would like to say this, Mr. Whitney, as I have indicated and

as you thoroughly understand, I think what I meant and what I now mean is precisely what I last said, not that I am trying to get tough with labor, not that I am trying to do something that is cruel and harsh to labor.

I believe, though, that when the public interest is threatened by a situation which the President of the United States declares to be a Nation-wide tragedy with world-wide repercussions, we ought not to be restricted to a mere power of gentle tapping on the wrist and saying, "Boys, come back and resume work and operations."

I say that we ought to have somebody with some power that is looking after the interests not of the employer, not of the employees solely, but of the public at large as against which this Nation-wide tragedy is about to be committed with the world-wide repercussions to which the President of the United States has referred.

My point is this, as I think I have made reasonably clear, that this bill, the Thomas bill, in my judgment does not provide for a means of enforcement.

My point is that in 1948, the report of this Board, the National Mediation Board said that—

Notwithstanding the action by which the President caused the operation of the railroads to be taken over by the Secretary of the Army, notwithstanding that the President called upon every railroad worker to cooperate with the Government by remaining on duty—

and this says—

Notwithstanding the above action, the threatened strike order was not canceled.

I say that we ought to have the same power, the same remedy that is provided right here and was invoked right here, namely, the strong right arm of the court of equity that says you cannot injure the public by this strike.

Now that is what I mean, and the word "teeth" is not intended in any sense at all to be hostile to labor. You understand the meaning of it. I tried to make it as clear as I could what I feel about it.

Mr. WHITNEY. I think an injunction has teeth; do you not?

Senator DONNELL. I am going to leave that word out. You seem to be inclined to—

Mr. WHITNEY. I think it is a very good word to describe—

Senator DONNELL. If you want to use it, you can; but the point I am making is this: That an injunction has the power behind it that was used by the court against John L. Lewis and against his union; that when these men take the position that they are above the law, that they are not going to follow the law, or if they contest the validity of the law, as did Mr. Lewis—and I am not so sure whether it was a mere contest of validity or what it was; but when they proceed to violate all the interests of the Nation and permit a Nation-wide tragedy of this kind to be entered upon—I say that we ought to have some power somewhere in the courts to say to these men, "You cannot injure the public in this way; and if you do, you are either going to jail or you are going to pay a fine." I think that is right and proper.

Mr. WHITNEY. And you left out one essential element, "and you are going to accept the boss' dictate."

Senator DONNELL. No; that does not refer to the boss.

Mr. WHITNEY. In other words, you want to put a million railroad workers in jail for a handful of bankers in New York. That is what it sounds like to me, Senator.



Senator DONNELL. There was nothing said at all of that kind.

Mr. WHITNEY. What is going to happen to wages during the injunction? Are you going to give the employer all he is asking for?

Senator DONNELL. The situation is this: I would not have, if I had the writing of this law—I would leave it to the interests of labor, on the one hand, or capital on the other. They are conflicting interests in a way. They are coordinating interests in a way. One cannot succeed without the other, but they have controversies, as we all know, and you and I, as citizens, every man in this room and in the Nation and the little children of the country, are caught beneath a conflict, a controversy of two great interests, on the one hand, and they are ground to pieces.

I say that the provision of the Taft-Hartley Act, not a permanent injunction—there has been no provision for a permanent injunction. There has been some suggestion that perhaps it ought to be, I am not sure about that, but there is a provision for an 80-day injunction, and personally I am in favor of it, and I think it ought to be in there.

Now, we do not agree on it. You will not be convinced, I appreciate, by my suggestions, as I, of course, have a great respect for your opinion.

Mr. WHITNEY. I think, Senator, I am sure you are preeminently sincere, but I think you are leading us right down the road to totalitarianism. I think you are saying when labor and capital cannot agree, put labor in jail if necessary and do nothing to capital.

Now I say to you, sir, that that is totalitarianism of the very worst form. We have not had it in all the glorious history of our Republic. Why do we have to have it now? Why do we have to have oaths to make people holy in this country?

I will tell you, Senator, if you want an oath, if we have got to purify people by oaths, let us get germane to the subject.

Senator DONNELL. Are you talking about the Communist oath now?

Mr. WHITNEY. Yes. I do not believe—I think a traitor is a despicable person, but I do not believe he is any more despicable because he is a leader of workingmen, but if you want an oath, if that will salve somebody's feelings, put this kind of an oath in the Labor Act and at least it will be germane to the subject:

Any person who wants the services of the Board, employers or employees, shall take an oath that they do not believe in the overthrow of the principle of collective bargaining nor do they belong to any organization believing in, advocating, or practicing the overthrow of the principles of collective bargaining.

Now, that would be germane to the law and the worst consequence that I can think of, coming from that, is that it might put the NAM out of business.

Senator DONNELL. Well, I take it you would not particularly be opposed to that course of procedure, would you?

Mr. WHITNEY. I really would not oppose that; no.

Senator DONNELL. No; I did not think you would. I thought what you were going to propose was an oath to be taken both by capital on the one hand, the representatives of management on the one hand, and the representatives of labor on the other.

Mr. WHITNEY. This kind of an oath; yes.

Senator DONNELL. I beg your pardon?

Mr. WHITNEY. The oath I have described to you. After all, the law is to promote collective bargaining. Now make your oath apply to the purpose of the law.

Senator DONNELL. I think the oath which is prescribed in this bill relative to communism is designed to prevent interference, first, with industry, second, with public welfare by subversive interests, and that ought to perhaps be extended. In fact, I think it should be extended to affidavits to be made by the management as well as labor.

Your suggestion is an interesting one, and it is entitled to be considered. I would never have thought of it until you suggested it at this moment, but it is certainly entitled to consideration. To my mind, there is certainly nothing harmful in an oath requiring both management and labor, the officers certainly, to swear that they are not members of an organization which believes in overthrowing the National Government.

Mr. WHITNEY. How about the Union League clubs and the Rotary clubs and the chambers of commerce? Are they not just as bad, if they are traitors, as the workingman or the employer?

Senator DONNELL. Certainly they are.

Mr. WHITNEY. Why do you want to pick on the employers and workers?

Senator DONNELL. I think there is a very great difference on that. To my mind, an officer of the Rotary Club would have considerable difficulty in doing the same damage to the community or to the Nation as a whole as would the officer of a railroad labor union or a non-railroad-labor union like the United Mine Workers, and also he would have much difficulty in rendering the same damage as would the employer who is the employer of labor.

I have known plenty of Rotary Club men, fine gentlemen, and yet they may not have had Nation-wide businesses, they may not have had manufacturing businesses at all. I see no occasion to require the officer of every social organization or semibusiness organization to take such an oath.

Mr. WHITNEY. The point I make is this: A member of a Rotary Club or of the chamber of commerce or a preacher or a teacher does not have to believe in the principle of collective bargaining to function under these labor laws, but certainly every American should be loyal to his country and should not be subversive, and I do not know why you carve out a segment of people and say they shall take the oath of loyalty to the country but no one else.

Well, I do know why. The reason was obviously to smear American labor leaders as Communists. That was the only purpose of the oath in the first place.

Senator DONNELL. I am very glad to have had your suggestion, and I know our committee will give it full consideration, but may I ask you there, in connection with the importance of adherence, in the principle of collective bargaining, do you have any objection to what is in the Taft-Hartley Act, namely, a provision on the one hand:

It shall be an unfair labor practice for an employer to refuse to bargain collectively with representatives of his employees, subject to the provisions of section 9 (a)—

and on the other hand, a provision that:

It shall be an unfair labor practice for a labor organization or its agents to refuse to bargain collectively with an employer, provided it is a representative of his employees subject to the provisions of section 9 (a)?

Do you see any objection to having those provisions in the labor law?

Mr. WHITNEY. Yes; I am inherently suspicious of it because we know that, on the one hand, many employers do not want to bargain collectively. They want to crush unions. We know, on the other hand, that a union—its whole purpose of being is to bargain collectively.

Senator DONNELL. Did you gentlemen bargain collectively in 1946 when you went out on strike?

Mr. WHITNEY. Did we bargain collectively?

Senator DONNELL. Let me finish the sentence. Did you bargain collectively in 1946 up until the time that you struck?

Mr. WHITNEY. Well, we tried to bargain collectively over a period of 2 years preceding this.

Senator DONNELL. I am talking about immediately before you struck this country, the railroads of this Nation.

Mr. WHITNEY. I do not understand that adherence to the principles of collective bargaining means the surrender of the right to strike.

Senator DONNELL. I understood you did not mean that.

Now, let me ask you this: It is pretty clear, is it not, that the Thomas bill does not provide for an injunction in the case of a national emergency. You are quite well satisfied for it to read in that way. Is that right?

Mr. WHITNEY. That is correct. I would not be supporting it if I did not feel that way.

Senator DONNELL. Now, there has been raised in these hearings this question, however. It has been suggested by the Attorney General of the United States that the President has broad inherent powers in matters of national welfare and emergencies, and he has then proceeded with a belief, not an opinion but a belief as he expresses it, that the President of the United States, upon being confronted by a national emergency under appropriate circumstances will have access to the courts of the United States for protection of labor, which leads me to ask you your opinion as a lawyer as to whether or not the President of the United States does have any inherent power, in the absence of legislation conferring upon him that power, does he have any inherent power to proceed, or do the courts have any inherent power, the Federal courts, to grant an injunction under the circumstances to which I refer?

Mr. WHITNEY. I have not made a study of that. I would not want to pose as an expert or authority on it. I know this: There have been situations in States where State governors in strike situations have taken plants over where there was a lock-out or even where there was a strike situation, but they did not force the workers to produce for private interests. That is slavery.

If the President should take over in a situation like that, I would hope he would be fair-minded enough to say, "Wait a minute, these men will not become slaves of the railroad bankers. The profits will no longer flow into the till of the railroads. They will flow into the till of Uncle Sam," and I think you would find a lot of bankers deciding, "Well, we ought to get together and deal with these boys. They are not such a bad outfit, after all."

I think you would bring them to time right away, but you will never do it when you put the whole burden on the workingman.

As I insist, Senator, as I said in my testimony, right now and historically, there is more incentive today for workers to settle than there



is for the bosses. The bosses never miss a meal or skip a pay check in a strike situation, but workers lose their pay.

Senator DONNELL. Which leads me to the question, which was not answered, as to whether or not in your opinion as a lawyer the President possesses inherent power to ask the courts to grant injunctions, and as a part of the question, if you like or you can answer them separately, do you think the courts have authority independently of legislative grants of that authority to issue an injunction to prevent a national emergency from occurring?

Mr. WHITNEY. Well, as I said, I am not a student on it, and I certainly hope that we have gotten rid of government by injunction, that is, I hope that as soon as we pass S. 249 we will have.

Senator DONNELL. In other words, you are hoping that S. 249 will make it impossible at any time hereafter?

Mr. WHITNEY. Absolutely.

Senator DONNELL. Now, wait a minute. You are hoping that the passage of S. 249 will make it impossible for anybody hereafter to secure an injunction against a strike even though a national emergency is threatened or exists; is that right?

Mr. WHITNEY. Absolutely. I do not believe in government by injunction. I think it is nothing better than what Russia has where they have no strikes. Is that what you would lead us into, Senator?

Senator DONNELL. No. I have tried to get out of Russia here two or three times this afternoon. You have been bringing me in there every time. You are getting me over behind the iron curtain every time in spite of myself. [Laughter.] I am interested to know that you hope now that this Thomas bill will prevent the use of injunctions in the future in national emergencies. Now, I want to ask you, in addition to your hope, as a lawyer is it your opinion that S. 249, the Thomas bill, will prevent the use of injunctions, the securing of injunctions hereafter to stop a strike which threatens a national emergency?

Mr. WHITNEY. I hope it will put us back under the Norris-LaGuardia Act.

Senator DONNELL. And stop the issuance of injunctions, is that right?

Mr. WHITNEY. Absolutely.

Senator DONNELL. And in the third case, I understand you to say you have not made a study of whether the President does have an inherent power to secure an injunction and the courts an inherent power to grant it, without statutory approval.

Am I correct in my assumption that even though you have not made a study to that effect, you hope that neither the President nor the courts will have any such power to secure or issue an injunction?

Mr. WHITNEY. Absolutely.

Senator DONNELL. Even in case of a national emergency after the Thomas bill is passed; is that right?

Mr. WHITNEY. Absolutely.

Senator DONNELL. Do you agree with that statement?

Mr. WHITNEY. If the injunction comes——

Senator DONNELL. Do you agree with my statement?

Mr. WHITNEY. I agree that it should not exist if it is applied to labor alone. If, in a national emergency or war, of course I understand that a President can take over industries.

Senator DONNELL. That is, Congress has given him that power in war in the Smith-Connally Act. Do you remember that?

Mr. WHITNEY. Yes; I remember that.

Senator DONNELL. That was the John L. Lewis case, was it not?

Mr. WHITNEY. I can remember, Senator, when the Scripps-Howard newspapers said that the Smith-Connally Act was a terrible blunder and they hoped Congress would take it off. My, how the reactionary interests of this country have grown in the last few years.

Senator DONNELL. You are hoping very much, and your hope almost approaches the opinion that if the Thomas Act shall be passed, we are not going to have any more injunctions, even in case of a national emergency against labor itself; is that right?

Mr. WHITNEY. I hope we will be free as we have been for 175 years.

Senator DOUGLAS. Mr. Chairman.

Senator DONNELL. I yield for a question.

Senator DOUGLAS. I wonder if our good friend from Missouri and the other Senators would not be interested in a discussion of this subject by Theodore Roosevelt who, I think, was a good Republican.

Senator DONNELL. I hope you will put that into the record in a moment, but may I call to your attention that I would like for you to do it on your own time, Senator, because we are very pressed. I hope you will do it, and I will remind you of it if you do not think of it.

I want to ask you one point, and that is with respect to this provision of the Thomas bill relative to the Mediation and Conciliation Service. You recall the provision that wants to put that back into the Department of Labor instead of allowing it to continue as a distinct independent agency?

Mr. WHITNEY. That is right.

Senator DONNELL. Do you favor the provisions of the Thomas bill in that respect?

Mr. WHITNEY. Oh, absolutely, Senator. We operated under that for years. I think again—present company excepted, of course—the NAM interests, that is just a campaign to smear the Department of Labor. My goodness, when you consider the amount of money you appropriate for human labor in this country and the Department of Labor as compared with the Commerce Department and commercial interests, I think it is pretty small of the NAM to make a fuss about that. Of course, labor matters should be handled in the Department of Labor.

Senator DONNELL. You think that management has any interest at all in mediation and conciliation?

Mr. WHITNEY. Why, of course, they have.

Senator DONNELL. Do you think it ought to be over in the Department of Commerce then, that particular service?

Mr. WHITNEY. No; why would you put labor in the Department of Commerce? It used to be one department.

Senator DONNELL. I was not talking about putting labor in. I was talking about putting the function of mediation and conciliation, which refers to both labor and management and in which both are equally interested. I am asking you whether you would like to have that over in the Department of Commerce?

Mr. WHITNEY. No; it has never been there historically. It has functioned satisfactorily in the Labor Department. Why would you want to put it in the Department of Commerce?

Senator DONNELL. So you would not want it——

Mr. WHITNEY. Would you put it in the Post Office?

Senator DONNELL. You would not want it in the Post Office. Speaking of the NAM, I understood you to say you are not conceding at all that the NAM had nothing to do with the preparation of the Taft-Hartley bill. You are not conceding that?

Mr. WHITNEY. No. I understand Senator Taft is on record as saying of the Taft-Hartley bill that "We gave the employers most of the things they have been asking for, for many years," and when I read NAM circulars and read the Taft-Hartley Act and arguments in support of them, they are practically indistinguishable.

Senator DONNELL. I am not authorized to speak for Senator Taft. I have never seen that statement to which you refer and, furthermore, we have had very clear unequivocal statements from both Senator Taft and Mr. Shroyer, the then counsel of the committee who is now acting as counsel—I do not know whether it is for the committee or our side of the table, but at any rate he is sitting here and counsels with us from time to time—both of those gentlemen have stated to the committee, the press, and the public that the NAM did not write this bill, and I think the substance is it did not have anything to do with the writing of it. We received their testimony the same as we are receiving yours.

Mr. WHITNEY. All I can say is, Senator, that it is a highly queer coincidence if the NAM had nothing to do with the Taft-Hartley Act, that they hit the jack-pot in getting nearly everything they wanted in it.

Senator DONNELL. You have quite a suspicion to the effect that notwithstanding these statements that have been made by Senator Taft and Mr. Shroyer, that the NAM did really have the writing of it?

Mr. WHITNEY. Well, I would say it is a very queer coincidence that practically everything the NAM wanted showed up in a bill which allegedly the NAM had nothing to do with.

Senator HUMPHREY. Will the Senator yield?

Senator DONNELL. I yield the floor; yes.

The CHAIRMAN. Senator Douglas wanted to ask a question.

Senator DOUGLAS. Well, in this discussion on the powers of the President, I thought my good friend from Missouri might be interested in a statement by Theodore Roosevelt.

Senator DONNELL. I would like to hear it.

Senator DOUGLAS. Which is contained in his autobiography, pages 388 to 389, and I read——

The CHAIRMAN. Senator Douglas, will you tell us when Roosevelt said that?

Senator DOUGLAS. It is in his autobiography.

The CHAIRMAN. Is it in connection with the coal strike?

Senator DOUGLAS. No; it was a summary of his whole administration.

The CHAIRMAN. He does not date it?

Senator DOUGLAS. He summarizes, as will be seen from the context, the theory upon which he preceded throughout his administration.

The CHAIRMAN. I was trying to orient my mind back to the coal strike then.



Senator DOUGLAS. That was one factor, one incident rather.

"The most important factor," said Roosevelt, "in getting the right spirit in my administration next to the insistence of general democracy desiring to serve the plain people was my insistence upon the theory that the Executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its constitutional powers. My view was that every executive officer, and above all, every executive officer in high position was a steward of the people bound actively and affirmably to do all he could for the people and not to content himself with the negative merits of keeping his talents undamaged in a napkin.

"I decline to adopt the view that what was imperatively necessary for the Nation could not be done by it unless he could find some specific authorization to do it. My belief was that it was not his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of Executive power, I did and caused to be done many things not previously done by the President and heads of the department.

"I did not usurp power, but I did greatly broaden the use of Executive power. In other words, I acted for the public welfare. I acted for the common well being of all the people, whenever and whatever manner was necessary unless prevented by direct constitutional or legislative prohibition. I did not care a rap for the form and show of power. I cared immensely for the use that could be made of the substance."

And going on he says that at the time of the coal strike in 1902 he was ready to take over the mines and work them had he not succeeded in bringing the operators and the miners together in settlement.

I suppose on this basis he justified his policy in Panama and in a number of other cases as well.

I mention this to indicate that there have been Republicans in the past in high position who have taken the position that the President had these broad residual powers, and I thought my good friend from Missouri would be much interested in this quotation which I bring forward.

Senator DONNELL. I thank the Senator for introducing it in the record.

Senator WITHERS. Senator Douglas, that is the rule of reason.

The CHAIRMAN. Senator Neely.

Senator NEELY. Mr. Whitney, you have stated that you are aware of the fact that 13 Members of the House voted against the President's recommendation regarding the conscription of the railroad labor?

Mr. WHITNEY. That is correct.

Senator NEELY. I was one of those 13 Members of the House.

Mr. WHITNEY. We are proud of you for that. You are one that did not lose your head.

Senator DONNELL. Senator, I beg your pardon. I did not hear what you said.

Senator NEELEY. I said that I was one of the 13 who voted against the conscription of the railroad labor during the Seventy-ninth Congress.

Senator DONNELL. The request made by President Truman of the Congress?

Senator NEELY. That is right, and I have much greater respect for him than the Republicans now have for Theodore Roosevelt, whom they read out of their party.

The CHAIRMAN. We are wondering if Senator Neely would have voted as 1 of the 13 had he known that the number was going to be 13. [Laughter.]

Senator NEELY. Even that hoodoo would not have deterred me.

Senator HUMPHREY. I just wanted to bring a pertinent matter to the attention of the committee. I am having an exact quotation brought for the purposes of the record just as soon as it can be extracted from the transcript of the proceedings at the Democratic National Convention. I was a member of the platform committee at the Democratic National Convention—of the preliminary drafting committee—and at that time we had witnesses who came from different areas of American life; and one of them was the president of the National Association of Manufacturers.

Now, if my memory serves me correctly, and I think it does because I tried to check from the original transcript of the record, I should say from a duplicate of the record that I had, the president of the National Association of Manufacturers was asked by Maurice Tobin who at that time was not the Secretary of Labor but was a candidate for office in Massachusetts, the following question :

Did the National Association of Manufacturers present proposals to the Congress of the United States or to the appropriate committee pertaining to labor-management legislation?

The president of the National Association of Manufacturers answered in the affirmative. He said "Yes, it did."

Senator DONNELL. He appeared here as a witness, did he not?

Senator HUMPHREY. No, that was—

Senator DONNELL. Mr. Smethurst.

Senator HUMPHREY. No, I think his name was Sayre.

As I said, I will get the whole record for the purposes of our record. The second question was: Did the Congress of the United States act upon these recommendations of the National Association of Manufacturers, and the substance of the answer of the president of the NAM was that it did. I recall asking this question :

Did the major portions of your recommendations as presented to the Congress and its legislative committees become a part of and the substance of the Taft-Hartley law—

and he said "Yes, those major portions did become the substance of the Taft-Hartley law."

Now I was very much interested here the other day in the conversation we had pertaining to whether or not NAM representatives had anything to do with Taft-Hartley. I am sure in my own mind that they did not walk in and write the law.

I am equally confident that they did present proposals which for some strange reason, coincidence, or whatever you wish to call it, the substance of those proposals became the Taft-Hartley law, and I am confident of it because of the words of the president of the NAM, not by my own suspicion or by any intuition that I have, so I think we can put that down and I shall bring chapter and verse for the record and have it incorporated.

I realize it may be a bit suspect since it comes from the platform proceedings of the Democratic National Committee, at least to you, Senator.

Senator DONNELL. No, sir, I shall accept it as a truthful statement.

Senator HUMPHREY. It will be incorporated. I have asked for it.

Senator HILL. I suggest the Senator get consent for it to go in at this place in the record.

The CHAIRMAN. Without objection it will be inserted at this point.  
(The document referred to is as follows:)

PLATFORM AND RESOLUTIONS COMMITTEE, DEMOCRATIC NATIONAL CONVENTION, 1948,  
FIRST DAY, WEDNESDAY, JULY 7

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Mayor HUMPHREY. Mr. Sayre, I would like to ask you, did the NAM appear before a congressional committee outlining what it thought would be a favorable labor-management program within the last 2 years?

Mr. SAYRE. I think we appeared before Congress at the time of the Taft-Hartley consideration.

Mayor HUMPHREY. Yes. Does the NAM as an organization, which you are representing today, favor the Taft-Hartley Act?

Mr. SAYRE. By and large. We think it has done good. We are not ready to recommend amendment of it yet. We don't think it has been tried well enough.

Mayor HUMPHREY. Did the Taft-Hartley Act incorporate in it the objectives and the principles and program that was outlined by the NAM?

Mr. SAYRE. A good many of them.

Mayor HUMPHREY. It did incorporate a good many of them. So, you would say by and large, then, that the Taft-Hartley Act in its broad outlines, not in all of its details necessarily, was very much like the proposals of the NAM; is that right?

Mr. SAYRE. I would think so, although I am not familiar with the testimony at that time.

Mayor HUMPHREY. To your knowledge, that is the case.

Mr. SAYRE. Yes.

Mayor HUMPHREY. Thank you.

\* \* \* \* \*  
Senator DONNELL. I have no objection, but I would like, when he brings it, to let the rest of us see it.

Senator HUMPHREY. I will read it again.

Senator SMITH. Will the Senator yield for a question?

Senator HUMPHREY. I yield.

Senator SMITH. The Senator is not implying that the NAM used undue influence on anybody here in the legislature to pass that, is he? I was a member of this committee and I can say no NAM member ever approached me on the subject.

Senator HUMPHREY. I have never at any time implied any suspicion as to the motives or to the integrity of any Member of the United States Congress, nor do I do so now.

Senator SMITH. I am just wondering about the relevancy of this.

Senator HUMPHREY. It is very relevant.

Senator SMITH. The labor unions offered suggestions. They came from all sorts of sources.

Senator HUMPHREY. The relevancy is NAM had done a beautiful job prior to the election to make quite sure through the processes of the American elective system that there were people in the Congress of the United States who were, let me say, friendly to the attitudes as expressed in their proposals. Now that is all within the American elective process. It does not impugn anybody's motives or test his integrity, or anything else.

It just so happens that there was like-mindedness on both sides of the table, at least with the majority on one side of the table and with representatives on the other side of the table.

Senator DONNELL. I called attention of the Senator that this committee passed that bill out onto the floor of the Senate, as I recall, I think 11 to 2.



Senator HUMPHREY. That is right.

The CHAIRMAN. I think, Senator Donnell, we ought to let everyone know, when we bring those figures, that there were persons who voted for reporting the bill out that voted against the bill, and that said they were going to be against the bill. We do a reporting-out process which in no way binds us after we get on the floor.

Senator DONNELL. I agree thoroughly with the Senator.

The CHAIRMAN. I think since we have used that statement over and over again, and I know Senator Taft would agree with this, because when we reported it out none of us said we were going to support it as such; the question was on whether the bill should be reported or not.

Senator DONNELL. I think the Senator is quite correct as to our general custom. I do not recall anyone making any reservation, but I think anyone would have as a matter of practice, anyhow.

The CHAIRMAN. Of course, the minutes will show whether there was a definite reservation. The Secretary and I will get it straight. The Secretary has told us that not only was there a reservation, but actually there was a minority report, and I issued the minority report myself, so I think that is pretty good evidence that at least 1 of the 11 gave notice to the country that he was not going for the bill.

Senator DONNELL. Does the Secretary or the Senator remember how many signed the minority report?

Senator HUMPHREY. This is on our time now, you know.

Senator DONNELL. That is right.

The CHAIRMAN. We can find that out.

Senator DONNELL. Would you provide that for the record?

The CHAIRMAN. The boys say there were four who signed the report. Then you see, since there were two who voted "no," whether those two signed I do not remember, Senator Donnell, but at any rate this 11 to 2 means just exactly what we did. We voted to report the bill out.

Senator DONNELL. I think that is a correct statement.

The CHAIRMAN. And I hope that when the time comes here there will be that same good spirit that we can get this bill out on the floor, if I may make that plea, even if we are not all going to support it when it gets out there.

There are certain steps that have to be taken, and that is one step which can be taken without too much discussion. Let us discuss it over where there is more room, on the Senate floor, instead of here.

Senator NEELY. Will the Senator from Minnesota yield for a question?

Senator HUMPHREY. Go right ahead.

Senator NEELY. Mr. Chairman, I do not want to be considered as acquiescing in Senator Humphrey's allocating the entire credit for all the teeth in the Taft-Hartley law to the National Association of Manufacturers.

Let us remember that Mr. Robert Denham stated that he had prepared a memorandum, placed it into the hands of Senator Taft or Senator Donnell, and it went to the committee and that on examination he found that practically every recommendation he had made was in the law. I do not know who furnished the brains, if any, in the Taft-Hartley law, but I do know now that the National Association of Manufacturers and Robert Denham, the chief counsel for the Board, certainly furnished the teeth that are in it.

I hope that all the teeth will be extracted by this committee or by the Congress before this session ends.

Senator HUMPHREY. This is the same committee that will be working on the health bills, and we do hope to increase the number of dentists, and possibly we will be able to extract something.

I just wanted to say that the length of the bill would indicate that there are several people who advised on it and I do not want my remarks, Senator DONNELL, misinterpreted. I said substantial portions of the recommendations of the National Association of Manufacturers found their way or at least there were substantial portions of the Taft-Hartley Act which were similar to the substantial portions of the NAM testimony.

Senator DONNELL. I am not certain whether that is correct, as a matter of fact, but it is entirely possible. Of course, we had extensive hearings of which it was not my good fortune to attend many because of other engagements.

Senator HUMPHREY. Now I would like to ask Mr. Whitney a question. How long has the Brotherhood of Railroad Trainmen been in existence?

Mr. WHITNEY. Sixty-five years.

Senator HUMPHREY. Sixty-five years?

Mr. WHITNEY. Yes.

Senator HUMPHREY. We have had railroading in this country about how long, 100 years or more?

Mr. WHITNEY. Over a hundred years.

Senator HUMPHREY. Over a hundred years.

Mr. WHITNEY. Since about 1829, I think.

Senator HUMPHREY. When the railroad workers of this country felt the effect of Government order in labor-management disputes, what was the means used to apply the rule of Government or the rule of law upon them?

Mr. WHITNEY. The injunction.

Senator HUMPHREY. We have had some very historic cases, have we not, that have left a rather bloody mark almost on the history of American life? Is that one of the reasons that you are so opposed to the injunction proceeding?

Mr. WHITNEY. Absolutely. I think the injunction not only actually but morally has a terrific impact on workers. I think one of the worst things about government by injunction in human relationships is it gives the workers a feeling that their own Government is against them.

Workers do not mind the Government stepping in and saying, "Here, now, we have got to be fair about this. We have got to protect the people and protect both sides." but when the Government puts all the burden on the workers, it is wrong. Senator Taft, I understand, is opposed to peacetime conscription. The injunction is peacetime conscription only it is applied just to working men.

Senator HILL. May I ask a question?

Senator HUMPHREY. Go right ahead, Senator.

Senator HILL. Is it not true, Mr. Whitney, too, that even those who so strongly favor the injunction admit and recognize that the injunction is no sure or definite means of prevention or curing of strikes? Is that not true?

Right here in the Taft-Hartley law is the provision that after the 60-day period has expired, the injunction shall then be dismissed and that is the end of the injunction. Is that not true?

Mr. WHITNEY. That is true.

Senator HILL. Admitting that there is nothing about the injunction which would in any way insure that there would not be strikes or the continuance of strikes, is that not so?

Mr. WHITNEY. That is true. It settles nothing.

Senator HILL. It settles nothing.

Mr. WHITNEY. As I said in my summary, it protects only the unjust in their injustices.

Senator HUMPHREY. What happens during the period after expiration of 80 days? The injunction is, let us say, for 80 days. Then what happens? What if we still have a national emergency?

Mr. WHITNEY. Yes, and you have had the warming-up process. You have had the employer who has no incentive to settle as long as the Government will do the job of strikebreaking for him, and they have sat for a period of 80 days and done nothing, and by that time the inequities are even worse, so the injunction does not just maintain a status quo. It worsens the situation.

Senator HUMPHREY. There is no power under the Taft-Hartley Act after the 80 days, is there?

Mr. WHITNEY. No.

Senator HUMPHREY. A national emergency then may continue after the 80 days. Is that right?

Mr. WHITNEY. That is so.

Senator HUMPHREY. Then we would be getting right back to the Thomas bill after we have gone through this inequitable process of 80 days of inequity, only without any proscription under the Taft-Hartley Act of a fact-finding board with powers of recommendation, but in the meantime we have aggravated the situation.

We have imposed the injunctive proceeding upon the workers. We have not reached a solution. We have not determined as to even the bare facts in the case because the testimony thus far, as I have said repeatedly, has indicated that under the injunctive proceedings very few of the cases are really ever decided on the merits of the facts which are available.

Senator DONNELL. Just a minute, Mr. Whitney, if I may. I am sure the Senator would like to have his question answered as to what happens after the injunction. It has been mentioned in the record before.

Senator HUMPHREY. All right.

Senator DONNELL. Section 210 of the Taft-Hartley Act tells what happens:

Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

Senator HUMPHREY. So the difference between these two acts is the difference in the time period. Under the Thomas bill it is 30 days. Under the Taft-Hartley bill it is 80 days. Under the Thomas bill the



injunction is not used, but there is a requirement in the statute in good faith calling upon good Americans to continue their employment during the period of time that the fact-finding board operates, during which time the fact-finding board shall make recommendations in which the Conciliation and Mediation Service can be brought into play, and then after that it is perfectly obvious that the same thing happens as is happening under the Taft-Hartley Act.

The President will act and he will report his appropriate recommendations to Congress. He does not need any law to tell him that.

Senator DONNELL. It does not say that.

Senator HUMPHREY. But the Constitution of the United States says that the President at any time may call a special session of the Congress. The Constitution also provides him with the right, does it not, of preparing or recommending legislation or a program to the Congress, and you do not need a statutory enactment on the part of Congress to tell the President what the Constitution has already prescribed. Is that not correct?

Mr. WHITNEY. That is correct, and I think a very important point to remember there is this: I am sure I am correct in saying that this fact-finding procedure has never failed under the Railway Labor Act. In other words, when the President has appointed an emergency board, a strike has never gone on. It has been postponed, and why is that?

That is because up to that point, fact finding, mediation, and so forth, the workers do not feel that their Government is against them. They feel that there is give and take and an opportunity for wholesome settlement, but when you get into the injunction and teeth and force—I was very much disconcerted by Senator Donnell saying he was not even sure but what an injunction should be made permanent. Well I suppose sometime in history—

Senator DONNELL. I beg your pardon. I did not say that. I said that suggestion had been made.

Mr. WHITNEY. I thought you said you had not made up your mind about it yet.

Senator DONNELL. No, sir; I do not think I made any such statement as that.

Mr. WHITNEY. Yes, sir.

Senator HUMPHREY. I do not think I did. The suggestion has been made to that effect, however. Now, Mr. Whitney, we have a time element here. We have some difficulties about this. Just before I yield to Senator Hill, I would like to ask this question about the injunctive proceedings now and the settlement of disputes.

Under the Railway Labor Act you have had fairly good results, have you not, with language similar to that written in the Thomas amendments?

Mr. WHITNEY. I do not think there is any objection to the fact-finding feature of it that I have heard except that the railroads try to delay so much before we get to that part.

Senator HUMPHREY. Are you one of those who are somewhat mystified by the power of the court? And I want to preface my statement by saying that I have the greatest respect for the courts of this country. In fact I feel that they are one of the bulwarks of our freedom and surely one of the essential features of our constitutional system.

Mr. WHITNEY. I agree with you.

Senator HUMPHREY. But the power of the courts, how do you get the power of the court? You are an attorney. I heard Senator Donnell give your background here. You are an attorney. How does the power of the court come into effect? Who enforces the court decrees?

Mr. WHITNEY. Well, the Executive.

Senator DONNELL. Those are two different questions you have asked him; two different questions.

Senator HUMPHREY. I am sorry. I regret that I have not had this legal training which makes it possible for me to go through this maze-trap system that we set up here on these things. We have a court order. I only remember what my study of constitutional law developed on one occasion. Andrew Jackson said to the court, "You made your order. You go ahead and enforce it."

Mr. WHITNEY. And nothing happened.

Senator HUMPHREY. Nothing happened; right. So we have the power of the court. The power of the court seems to be a terrific power, but what is the power of the court without a United States marshal behind it? What is the power of the court without the President of the United States behind it?

Mr. WHITNEY. The power of the court, as I understand it, is only to pass on what Chief Justice Taft once called "justiciable" issues.

Senator HUMPHREY. In other words, ultimate enforcement in any great national emergency which may come to the court falls back on the Executive, does it not?

Mr. WHITNEY. That is true.

Senator HUMPHREY. Now is there anything in an injunction proceeding in a national emergency wherein the issues of right and wrong, of justice, are settled?

Mr. WHITNEY. No.

Senator HUMPHREY. Are settled before the court?

Mr. WHITNEY. No. Just one man gives the word and that is all there is to it.

Senator DONNELL. Pardon me, Senator. I do not want to interfere on your time. Take this off of my time.

The Senator, of course, is not overlooking the fact that the court has power to enforce by contempt proceedings its orders, as Mr. Lewis well learned in the United Mine Workers case. The court does have power by contempt proceedings to enforce it.

Senator HUMPHREY. Senator, let us not talk about the fine-spun web of nothingness here.

Senator DONNELL. That is not fine spun. That is contempt of law.

Senator HUMPHREY. It is enforceable only because of the latent power of the Executive to enforce it; is that not correct?

Senator DONNELL. It is not. The court has the power by the issuance of a contempt order to require a man to go to jail or to pay a fine.

Senator HUMPHREY. The judges do not take him to jail.

Senator DONNELL. That is the power in the court and the court has officers which are created by act of Congress who can take him to jail and who can levy on his property. That power is conferred by congressional act.

Senator HUMPHREY. Does the court institute proceedings?

Senator DONNELL. No, sir; that is instituted by the Attorney General.

Senator HUMPHREY. That is by the executive branch of the Government; is it not?

Senator DONNELL. Yes. In the case of the Taft-Hartley Act it is by virtue of authority granted by the legislative body. "The President may direct the Attorney General to petition any district court," and so on, and the court shall then have jurisdiction to issue the order.

Senator HUMPHREY. I yield to Senator Hill.

Senator HILL. The Senator brought out what I had in mind, excepting this: We have had nearly a quarter of a century of experience under the National Railway Labor Act; have we not?

Mr. WHITNEY. Since 1926.

Senator HILL. In which this cooling-off process has demonstrated not only that it can work, but that it does work; is that not true?

Mr. WHITNEY. That is true.

Senator HILL. And has worked?

Mr. WHITNEY. Voluntary processes.

Senator HILL. Voluntary processes.

Mr. WHITNEY. Have succeeded in labor history of America. Compulsion has always caused more harm than good.

Senator HUMPHREY. Is it not true that in 1946, when the rail strike was on, when the dispute was on between management and labor—we always talk about these things, you know, as if this were a one-sided street—is it not true that when the President appeared before the Congress, and even during the middle of his speech, the unions did call off their order?

Mr. WHITNEY. They called it off around noon that day, as I understand the facts, and it was announced at 4 o'clock during the time the President spoke.

Senator HUMPHREY. Had the President of the United States by official proclamation, by the declaration of a national emergency and official proclamation, asked the folks to go back to work prior to that time?

Mr. WHITNEY. Not by an official proclamation; no.

Senator HUMPHREY. Actually made an executive pronouncement saying he called upon you as men and women to go back into the shops and factories?

Mr. WHITNEY. I was not there, but I suppose in private conferences with the parties he tried to get them to go back; yes.

Senator HUMPHREY. I see.

Senator DONNELL. I cannot hear you, Mr. Whitney.

Mr. WHITNEY. I say I was not there, but in private conferences I suppose, of course, the President was anxious for the parties to settle and to avoid the strike.

Senator HUMPHREY. Did the President hold any private conferences with management and labor in that period of time?

Mr. WHITNEY. I do not think so; no.

Senator HUMPHREY. Were they really called in? I am of the opinion that the whole thing was somewhat messed up, if you want my candid opinion.

Mr. WHITNEY. It was, and it has been recognized since then, as I understand it.

For instance, when Mr. Whitney and Mr. Johnson came down here urgently to settle this thing, were told that the railroads would be here and would settle it, the railroad representatives had gone home.



They were not even in the city. That is one of the things that we put up with that you did not read about in the newspapers.

Senator HUMPHREY. I have just this final question, on the Communist affidavit. Are you asking that the Communist affidavit part of the Taft-Hartley Act be eliminated from any future consideration for any future law?

Mr. WHITNEY. Absolutely, Senator. I think that is the most nauseating part of the Taft-Hartley Act, and I have not the remotest sympathy for communism.

Senator HUMPHREY. No one has ever accused you of that.

Mr. WHITNEY. The idea of saying to me that I can be excused but you have got to sign, I do not like that.

Now as I said, on an oath for collective bargaining, that has some germaneness to the law, but the only thing I can get out of the Taft-Hartley Act is that a man is heinous if he is a traitor and a labor leader, but otherwise it is all right, but to me all traitors are heinous, and I do not know why you should apply it just to one, and I do not mean to say that you should apply it to labor and management.

If we have got to the point in this country where in order to trust the American people we have got to sign oaths, I suggest we simplify it and adopt Adolf Hitler's "Heil Hitler." I think it is more simple and you will not have to keep so many records.

Senator HUMPHREY. You know we have a Securities and Exchange Commission and the Securities and Exchange Commission requires that certain information be filed if a corporation wishes to issue some new stock.

Mr. WHITNEY. That is true.

Senator HUMPHREY. Now in Mr. Clark's office, the Attorney General's office, we have a list of subversive groups in this country and not all of those groups are the "comrades." There is a goodly-sized list of the Communist-infiltrated outfits and of outright Communist organizations, but there is also a list, and there was a time in American when there was a good deal of talking about that list of native Fascist movements.

Now we had a most recent experience with fascism. We have a cold war going on with the Soviet Union, a cold war, but we are not burying many people from that war. It is a cold war. We had a hot war going on with some of the Fascists awhile ago, and it cost this country about \$300,000,000,000, and God only knows how much suffering and pain and loss of life and dislocation of our economy it caused in a world that was cockeyed.

Now do you not think, in view of that most recent experience, which should be fresh in the minds of most people, and in view of the fact that there is an obvious similarity between Fascist and Communist ideology, that if we are going to have a Communist affidavit in the Taft-Hartley law, the same condition should apply to the Securities and Exchange Commission Act, namely to have a "Fascist act" and say if you happened to belong to at any time or made a contribution to a Fascist organization, that you will be denied the opportunity to vote your securities on the American market? Because as far as I have been able to find out, these two ideologies are between devils and the only difference between them is which one gets into power.

Mr. WHITNEY. Here is another thing, Senator, that is to me essentially un-American about this oath. Now we have laws against crime.

We must always have them, and if you violate those laws, you go to jail or you are punished, but the doctrine that if you do not do something you will be denied the equal protection of the law is a very dangerous doctrine and that is what the oath does.

It does not send anybody to jail. It just says "You cannot use the services," and I quote the word "services" of the Board, under the Taft-Hartley Act.

Now if it is going to be a crime not to sign an oath in this country, make it a crime and send me to jail if I do not sign. I think that is fascism. I detest it. I do not think you can purify men by making them sign oaths.

Senator HUMPHREY. Particularly people who are so immoral and so totally lacking in principle that they subscribe to those ideologies. Are they going to be so worried about signing an affidavit?

Mr. WHITNEY. They will probably sign one, but—

Senator HUMPHREY. And get a badge of purity.

Mr. WHITNEY. My only point is, the president of my organization, Mr. Phil Murray, and the others did not want to sign the oath because they know it is intended to smear them and their patriotism. It is a sorry day for America when anybody thinks Americanism is slipping. I think the American people love their country as much as they ever did, and the thing that makes the American people love their country is because we have always done the things in this country to induce love, and you have not gotten love by taking oaths.

I would not ask my wife to take an oath of her fidelity to me, because I think that would be a pretty good way to lose her.

Senator HUMPHREY. I think there would be a lot of people who would agree with you on that.

Just in conclusion, you are here testifying for S. 249?

Mr. WHITNEY. That is correct.

Senator HUMPHREY. Do you think there is any language in that bill that needs to be revised, needs to be strengthened?

Mr. WHITNEY. We set that forth, Senator, in our—

Senator HUMPHREY. In your prepared script?

Mr. WHITNEY. About exempting the Railway Labor Act.

Senator HUMPHREY. I realize that. Is there anything else?

I am concerned about whether or not you as a representative of a great labor organization feel, on the basis of trying to get the best possible labor-management law, that there are any desirable corrections, any additions, any expansions or contractions of the proposal that we have before us?

Mr. WHITNEY. Well, officially just that one about exemption. I might say to you, Senator, that I have read some of the testimony, I think all of it, of Mr. Green, the prepared testimony, and also of the general counsel of the CIO, and I thought both of them made some very valuable suggestions to the effect that the bill in some places does not mean exactly what probably was intended, and I think that this committee could well consider that very seriously.

Senator HUMPHREY. What do you think the Taft-Hartley Act means after Senator Donnell's explanation, first of all, on that saving clause where you have an injunctive proceeding that can be entered into and then all at once you come a little bit further in the law to find that nobody can be forced to work anyhow? What is the power of the court on that?

Mr. WHITNEY. Well, the whole Taft-Hartley Act, I have been reminded since I have been at this table, protects the right to strike. Yes, it does if giving scabs the right to vote the strikers out of a job protects that right.

Senator HUMPHREY. I would like to have for the record by one of the proponents of the Taft-Hartley Act, an explanation to me of this double talk that we get in the act on the one hand where we are going to protect the public welfare by the power of the court with the use of the injunction for an 80-day period, and on the other hand it is provided that there shall be nothing in this act that shall be construed to say a person shall be compelled to work.

I may be just a little bit fuzzy in my thinking on it, but I am of the opinion that the power of the court is what my distinguished colleague from Missouri says it is—he says it has the power and that power apparently is to enjoin workers from striking. All right, if that is the power of the court, how can you have that other clause which says there shall be nothing in this act that shall be construed to compel the person to work?

Is that just sort of a nice platitude for the thirteenth amendment that abolished slavery? Is that what this amounts to?

Mr. WHITNEY. It was well named, "saving clause". It was designed to save the odious Taft-Hartley Act under the Constitution. That is the only saving part.

In other words, I think it was pure demagoguery. I think it was not sincere. Take the political provisions. It restricts any labor organization and any corporation whatever. Well, certainly "any corporation whatever" is at least just as inclusive as "any labor organization."

Is the Washington Post a corporation? Is the National Broadcasting Co. a corporation? I insist that under the strict terminology of the law, it in one fell swoop destroyed free press and free speech in this country.

I do not know what the authors were thinking of that would use language like that, and let me say here and now, gentlemen, that I think one of the most dangerous things about the Taft-Hartley Act and one of the most dangerous things about this monopoly propaganda of this country today is the tendency to regard, for legislative purposes, the democratic organizations of the people as though they were corporations.

Now, you know the amendment to the Constitution of the United States, which was designed to protect against human slavery, has been interpreted so that a "person" is a corporation, and I say that in regarding the democratic organizations of the people as to corporations, there is a dangerous tendency in this country.

The CHAIRMAN. Mr. Whitney, you reversed it. A corporation is interpreted as a person, not a person interpreted as a corporation.

Mr. WHITNEY. Thank you for the correction. Person means artificial person, in other words.

The CHAIRMAN. Corporation means artificial person.

Senator HUMPHREY. Here is a pamphlet that came to my desk entitled "The Iron Curtain."

Mr. WHITNEY. I have seen that, Senator.

Senator HUMPHREY. Do not look inside. This is sponsored by the National Labor Foundation, 139 North Clark Street, Chicago 2, Ill.

My colleague here, Senator Douglas—



MR. WHITNEY. I am awfully glad, Senator, you brought that to my attention. I direct your attention to the upper left-hand corner, and you will see the name "Maurice Franks, Railroad Yardmasters of America." Now, that Franks will be coming down here and telling you, "I represent railroad workers; I represent yardmasters." I think it is on the pamphlet. If it is not, it is on the envelope.

Senator HUMPHREY. It is not on the pamphlet, sir.

MR. WHITNEY. I think you will find it on the back, then, maybe. Anyway, Maurice Franks is the executive director of that outfit. Well, that is what labor has to contend with. I found that those fellows will come here representing a handful of workers and in the Eightieth Congress, they were given more time, if you please, than my own organization was given, and they are just a tool of the employers.

Senator NEELY. It is a phony organization.

MR. WHITNEY. Phony, yes. We represent yardmasters, but he would have you believe that he does.

Senator HUMPHREY. I thought my colleague from Missouri, and also the Senator from New Jersey would like to hear this language:

Power-hungry union big shots hate the Taft-Hartley law. Why? Because it makes them play fair. It queers their dictator acts so they have tried to kill it off with a fine label, but it is not what they want. It is what you want that counts.

Then, over on the next side, it says:

The union powerhouse gang and their political buddies are all set to fix things for themselves. They intend to kill the Taft-Hartley Act deader than a Russian herring. With them it is not a question of what is good for you. It is what they want, and they will get it, unless you who do the work and pay the freight begin throwing your weight around plenty and quick.

Now, we were talking about free speech, and we heard all these charges that were made here about labor leaders talking about the Taft-Hartley Act as slave labor, and even today the Senator from Missouri has by inference intimated that, as he would term it, the innocuous language of the Thomas bill was a slave bill too. What was his name?

Senator DONNELL. Mr. Christensen.

Senator HUMPHREY. Now, apparently the labor leaders were not so far wrong in their criticism of this act, if we are to assume that your evaluation of the language in the Thomas bill is to be interpreted accurately.

Senator DONNELL. Might I ask the Senator if he will ask Mr. Whitney again, as I did—I do not recall if he ever answered this question—what he has to say about the point of Mr. Christensen's, whether or not he thinks that a requirement of the parties to the disputes shall continue or resume operations under terms and conditions of employment which are in effect immediately prior to the dispute, et cetera, whether or not that is contrary to the provisions of the Constitution of the United States, whether it is slave labor?

Senator HUMPHREY. That was your question to him, and I think you did have quite a good deal of debate about it, and you can make any reference or written statement you want to for the record.

I want to point out that is the kind of propaganda that is going out while this Congress is in session, and that we are being barraged by letters and material of this kind.

Senator DONNELL. Who got that out?

Senator HUMPHREY. National Labor Management Foundation.

Senator DONNELL. Do you know what that is?

Senator HUMPHREY. I don't know.

Senator NEELY. The address is 139 Clark Street, Chicago.

Senator SMITH. I am just as much against that kind of propaganda as I am propaganda on the other side. I am being showered with both, and it does not make for constructive labor legislation. This committee should not be influenced by that kind of propaganda.

Senator HUMPHREY. We had a very distinguished witness this morning, a man representing a fine organization, who sat in that same chair; and when I interrogated that man in reference to his testimony wherein they approved of the Taft-Hartley Act as having encouraged labor-management peace, he himself said that he himself had trouble understanding the Taft-Hartley Act—in fact, it was so confusing to him that he said he had to spend three times as much time on the Taft-Hartley Act as he had on his own agricultural legislation.

I am sure it was because of the intricacies of the law that he had to spend that time. I asked him pointedly: Had the membership of his organization that passed this resolution, putting the stamp of approval upon Taft-Hartley, had they had a chance for an objective analysis of the act, had they had speakers before them with an objective analysis of the act in order to give that kind of analysis; and he said no.

Now it seems to me that we have had people, I suppose, on both sides of the fence, but some of the witnesses, who have been of the opinion that the act is bad or that it is good simply because they have read that it is bad or good. Now I know that I have learned, as I said this morning, many things, and I repeat that after I heard my good friends and colleagues, Senators Neely and Morse, speak on the powers of the general counsel, I don't know how any man in the Congress of the United States, who has worried about the executive powers of this Government, a man elected by the people and the only man in our Government who is elected by a majority of all our people—

Senator DONNELL. The present President was not.

Senator HUMPHREY. Why worry about the executive powers of the President when you give to the general counsel of the NLRB, powers that aren't even written in the law? That is the greatest abuse of executive tyranny I have ever witnessed in any one particular statute.

Mr. WHITNEY. Mr. Sanders of the Grange spending three times as much time on the Taft-Hartley Act as he is spending on agricultural interests just goes to prove that the Taft-Hartley Act hurt the farmers as well as labor.

Senator HUMPHREY. I will accept that, sir. That is all.

The CHAIRMAN. Senator Withers.

Senator WITHERS. I would like to ask a question or two.

The Senator from Missouri keeps talking to you about a number of emergencies wherein the Government was imperiled. Do you know of any of those?

Mr. WHITNEY. That is a very good point. They are taking a very rare situation in the industrial life of America that happens only when monopolies have become powerful and arrogant, and the more the Government does to crack down on labor, the more it does to incite national emergencies which we all want to avoid.

Senator WITHERS. You are a lawyer?

Mr. WHITNEY. Yes.

Senator WITHERS. Do you think a perpetual injunction would be constitutional, granted against either capital or labor?

Mr. WHITNEY. I wouldn't think so. Well, it is just totalitarian. There is no getting around that.

Senator WITHERS. It is involuntary servitude?

Mr. WHITNEY. It is involuntary servitude.

Senator WITHERS. You do recognize there is some sort of power inherent whereby somebody could force regulation in case of dire emergency, when the safety of the country is imperiled, to the effect that the President or some other executive authority would have the power to invoke such remedies as might be necessary to preserve our integrity; is that right?

Mr. WHITNEY. Not only would, but that has been demonstrated.

Senator WITHERS. You don't want to see that happen, but you wouldn't want it done to the exclusion of one class and the burden of another, would you?

Mr. WHITNEY. That is right. It is presumed when the President acts in a national emergency he will act for the welfare of all the people.

Senator WITHERS. Do you know of any good lawyer who has suggested that a perpetual injunction would be legal to require men to work, a continuing injunction?

Mr. WHITNEY. No question but what it is involuntary servitude and unconstitutional.

Senator WITHERS. You think it would be unconstitutional?

Mr. WHITNEY. Yes, sir.

Senator WITHERS. Have you ever heard any lawyer with considerable experience and practice ever utter any opinion indicating that a perpetual injunction would be legal?

Mr. WHITNEY. No. To me the term itself is frightening.

Senator WITHERS. They keep talking about the remedies of the Taft Act against management. Do you know of any remedy in there that is perpetual and continuing against emergencies?

Mr. WHITNEY. No.

Senator WITHERS. The 80 days or the 60 days, 15 days plus 5, that is all you know, and beyond that there is no limit; is that right?

Senator DONNELL. Might I call attention to the fact that in the railroad case, from which I read, this language appears. I mean to say the National Mediation Board says:

A temporary order was granted on May 10 and as a result the threatened strike was called off. Following hearings, a preliminary injunction was issued by the court on June 11 and a permanent injunction was issued on July 2, 1948.

Senator WITHERS. For what? A permanent injunction for what?

Senator DONNELL. A permanent injunction. It doesn't tell.

Senator WITHERS. There are different kinds of injunctions.

Senator DONNELL. Obviously a permanent injunction preventing a strike.

Senator WITHERS. That is all right.

Senator DONNELL. I see no prohibition against the court granting a permanent injunction against a strike, which is entirely different, however, from requiring a man to work, a concerted action on the one hand, requirement of a man to work, an individual to work, on the other, they are two different things and not governed by the same principles.



Senator WITHERS. You are taking the position that you have a negative remedy then instead of a positive remedy.

Senator DONNELL. I say this court granted, as stated by the National Mediation Board, a temporary order, which later was followed by a preliminary injunction and subsequently by a permanent injunction.

Senator WITHERS. You haven't told me what that injunction is.

Senator DONNELL. I haven't read it.

Senator WITHERS. You have called my attention to it.

Senator DONNELL. I will call to your attention again that that was from the fourteenth annual report of the National Mediation Board.

Senator WITHERS. You tell me what injunction it is and I will answer you.

Senator DONNELL. I am not asking for an answer.

Senator WITHERS. There are so many kinds of injunctions that could arise in this. I am talking about an injunction requiring a man to labor. Can you find that? Can you find where they have done that?

Senator DONNELL. The Taft-Hartley Act doesn't require it. Section 502 says:

Nothing in this act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this act be construed to make the quitting of his labor by an individual employee an illegal act. \* \* \*

Senator WITHERS. I understand that, Senator, but you are trying to confuse the issue, I believe.

Senator DONNELL. I didn't intend to.

Senator WITHERS. Let's see if you are not. The single employee is one individual, but you wouldn't say that if the whole union were out.

Senator DONNELL. I would say this: A concerted action in many cases is illegal when individual action is not.

Senator WITHERS. That is where you confuse Senator Humphrey and the witness.

Senator DONNELL. I am not intentionally confusing anybody.

Senator WITHERS. You drift to that when you attempt to say that the whole remedy is in the Taft Act. What remedy is there in the Taft Act that will prevent strikes?

Senator DONNELL. I didn't get your question.

Senator WITHERS. What is the remedy in the Taft Act that will prevent strikes?

Senator DONNELL. We are talking about national emergencies, I assume.

Senator WITHERS. Yes.

Senator DONNELL. Section 208 (a) reads:

Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof and to make such other orders as may be appropriate.

Senator WITHERS. Granted for the period of 80 days.

Senator DONNELL. Yes, sir.

Senator WITHERS. At the end of 80 days what do you do?

Senator DONNELL. At the end of 80 days as I stated before and as I stated this afternoon, the Taft-Hartley Act does not purport to extend the term of the injunction beyond that time, but provides that the Attorney General shall move the court to discharge the injunction, which motion shall then be granted, and the injunction discharged; and then, as Senator Taft pointed out the other day, when such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

Senator WITHERS. There isn't a thing there that he couldn't do independently of that. That doesn't solve anything. That merely says the President may submit the matter to Congress, which he could do independently.

Senator DONNELL. He can do it at any time.

Senator WITHERS. Why use language like that? I don't see a thing in it except that he can enjoin for 80 days, and that is all there is in that act.

Do you know of anything else in it? Do you know of any emergency that act would correct? Do you know of any?

Mr. WHITNEY. Not after the 80 days.

Senator WITHERS. I just wanted to get a little enlightenment on this myself, and you have gone over it as though the remedy is complete in the Taft-Hartley Act, giving you everything you want, but it is hardly as strong as you would have it. How much stronger can you make it and still be constitutional? That is what I want to know. Do you know how much stronger you can make it and have it constitutional?

Senator DONNELL. I don't know how much stronger you can make it. I haven't said I had——

Senator WITHERS. You said awhile ago——

Senator DONNELL. I will answer your question in a moment as best I can. I will say the permanent injunction issued in the railway strike, if that is what you are talking about——

Senator WITHERS. Tell me what that permanent injunction was.

Senator DONNELL. The injunction that the National Mediation Board is referring to was granted after the President had issued an executive order whereby operations of the railroads were taken over by the Secretary of the Army.

Senator WITHERS. I am not going to attempt to answer that until you tell me what that injunction was.

Senator DONNELL. Senator, I have told you three time I have never seen the papers.

Senator WITHERS. Why keep talking about it?

Senator DONNELL. I shall continue to keep talking about the National Mediation Board, what they say about, and if the Senator desires to have the papers on it, I presume he can go to the court and get them.

The National Mediation Board points out that notwithstanding the action by the President, notwithstanding seizure by the President and

the calling by the President on the workers to cooperate, somewhat similar to the call provided in the Thomas bill, notwithstanding the above acts, the threatened strike order was not canceled; whereupon, the office of the Attorney General applied to the court for a restraining order. Temporary order was granted and, as a result—you asked whether or not I ever knew of an injunction preventing a strike—the Mediation Board says the temporary order was granted on May 10 and as a result, the threatened strike was called off and thereafter, following hearings, a preliminary injunction was issued by the court on June 11, and a permanent injunction was issued on July 2, 1948. Seizure had already occurred by the President, as also indicated in this quotation.

Senator WITHERS. You never said how far that injunction went and what it enjoined.

Senator DONNELL. No, I haven't. I haven't read a word of the decision. I will read it to you.

Senator WITHERS. On your time.

Senator DONNELL. Yes, sir, on my time. This is it right here. I haven't read this. I assume it is the right case, and have no doubt it is. This is the case of United States against the Brotherhood of Engineers, United States District Court, District of Columbia, United States against Brotherhood of Locomotive Engineers, et al., No. 1936-48, July 1 and 2, 1948, and here is the permanent injunction:

This matter having come on for hearing on July 1, 1948, on plaintiff's application for a permanent injunction and the court having considered the evidence adduced at the hearing, the pleadings and supporting affidavits, the briefs, arguments of counsel, and the entire record herein, and the court having made findings of fact and conclusions of law, as above set forth.

Now, therefore, it is by the court this 2d day of July 1948,

Ordered, that the defendants, and each of them, and their officers, agents, servants, and employees, and all persons in active concert or participation with them, be and they are hereby enjoined from in any manner encouraging, ordering, engaging in, or taking any part in a strike in the transportation by railroad system of the United States, or from in any manner interfering with or affecting the orderly continuance of work in the said railway system, and from taking any action which would interfere with this court's jurisdiction in the premises.

Senator WITHERS. There isn't anything there ordering them to work. That is what I have talked about.

Senator DONNELL. As I have stated to the Senator repeatedly, the Taft-Hartley Act does not do so, there is no provision of law that I know of that says anywhere that a court can direct a man to work, and certainly the Taft-Hartley Act distinctly negatives any such intent or effect of the Taft-Hartley Act.

Senator WITHERS. You keep talking about an injunction to break a strike. How is it going to break it?

Senator DONNELL. I would think this was fairly effective when the court said, even the preliminary order, simply the restraining order was issued and that, "as a result, the threatened strike was called off." That is the National Mediation Board's report.

Senator WITHERS. I make quite a distinction between ordering a man to work and ordering him not to strike.

Senator DONNELL. I think you are exactly right, and I have tried to make that distinction.

Senator WITHERS. You keep talking about some power in the President to prevent strikes. What kind of power do you want the President to have?



Senator DONNELL. I would say the President has no power to do it. He has only the power that the Congress gives him. And if we go to the point at any time of saying that the President of the United States has the inherent power that is suggested in the Attorney General's letter, I say that we have arrived at a dangerous point, one which is fraught with danger, has no limitations that you can define.

Senator WITHERS. I am not going to argue with you about what you think. All I am talking to you about is what the law is.

Senator DONNELL. What point of law is it that you are concerned about, Senator? Perhaps the witness can tell us about that point. I have considerable difficulty.

Senator WITHERS. I have listened to you, and I think you have involved yourself in some inconsistencies, if I am not mistaken.

Senator DONNELL. What are they?

Senator WITHERS. You keep talking about somebody having power to prevent a strike and that you are in favor of—you talked about something having teeth. You talked about that.

Senator DONNELL. Yes; that is right.

Senator WITHERS. What kind of teeth?

Senator DONNELL. I would say the Taft-Hartley Act confers upon the President the power to direct the Attorney General to petition any court of the United States having jurisdiction of the parties to enjoin the strike or lock-out or the continuing, referred to, which is referred to in this portion of the act, namely, national emergencies.

Senator WITHERS. We all know that by heart.

Senator DONNELL. You asked for that.

Senator WITHERS. No; I didn't.

Senator DONNELL. What are you asking about?

Senator WITHERS. Perpetual power.

Senator DONNELL. I have not stated the President has permanent power.

Senator WITHERS. Would Congress have the power to delegate to him?

Senator DONNELL. It has power to delegate power to the courts, it has power to delegate power to the President, giving him the right to exercise power or by application to the court in case of national emergency. Congress can confer it; however, I deny that the President has power unless it is conferred on him by Congress.

Senator WITHERS. Congress has power to do something that the President does not have the power to do; is that right?

Senator DONNELL. Congress has the right to do something which the President without legislation has not. Congress has legislative power.

Senator WITHERS. Have you seen yet where the Congress has attempted to pass any act that would attempt to force a man to work in peacetime?

Senator DONNELL. No; I am not advocating that, and the Taft-Hartley Act doesn't do it and doesn't purport to.

Senator WITHERS. You spoke about the law having teeth in it.

Senator DONNELL. On this matter of teeth, the Senator will recall on the first day of the hearings in this matter, January 31, on account of a train being late  $2\frac{3}{4}$  hours, I missed the testimony of Mr. Tobin. Senator Aiken, as I understand from the record, said that this bill has no teeth unless it is false teeth.

I am not using the term "teeth" in any sense of ferocity toward labor or opposition to labor. What I am using it for—and if the word is objectionable to anybody or if it doesn't properly express my thought, I have no objection to using another name, and, in fact, I would prefer to use another name, so there wouldn't be any inference of ferocity—but I say we should have a law that is not merely, as this Thomas bill, a request to the boys to go back to work or continue to work, which request in the case of this railroad strike proved ineffective, notwithstanding that the President had seized the railroads and called upon, not merely requested, called upon every railroad worker to cooperate with the Government, and said that a strike on our railroads would be a Nation-wide tragedy with world-wide repercussions.

I say to pass a bill here which says that the President shall say to the boys, "Now, go back to work, boys," is without any effective power of enforcement. That is what I mean.

I advocate that we have a bill with some power of enforcement.

Senator WITHERS. I want to get through with this because I have been listening here—

Senator DONNELL. Whose time is this?

Mr. WIXCEY. This is your time, sir.

Senator DONNELL. I am told this is our time.

Senator WITHERS. I am pretty well satisfied that you are inconsistent, so I won't burden you.

Senator DONNELL. You are entitled to your opinion. I am perfectly willing to discuss this further with you on your time. I have tried to make my position clear.

Senator WITHERS. You butted in on me, and I supposed you would use your time.

Senator DONNELL. I am perfectly willing to have this colloquy charged to myself, but I cannot spend all of the time of our side in further discussion on it. However, if you want to discuss it on your time, we will proceed from now on until we get it settled, if we can.

Senator WITHERS. Of course, we can divide that. That would be fair.

Senator DONNELL. No; we won't divide it.

Senator WITHERS. You have made a lot of noise here about a temporary injunction furnishing all the power and all the virtues that you have attributed to it and ascribed to it, and I haven't seen the power yet, and then when we hem you up, you say, no, you can't do that, but you have used a lot of time talking to him about injunctions and then you turn around and say you haven't the power except temporarily. You know you haven't claimed any power under that act to break a strike.

Senator DONNELL. Is this on your time?

Senator WITHERS. I will let you answer that on my time.

Senator DONNELL. The Taft-Hartley Act does not undertake to do anything more than grant an 80-day injunction and then bring the matter back to Congress.

Senator WITHERS. We will end that right there. That is where I want to tie you. You stay there.

Senator DONNELL. I have been there all the time. I never asserted that the Taft-Hartley Act had any other effect.

Senator WITHERS. That is all right. I want to remind you of that every time you get over the line.

Senator DONNELL. I haven't been over it yet.

Senator WITHERS. The statement has been made here that under common law you don't have a right to strike. Do you know of any rule like that? Do you know of any utterance like that?

Senator DONNELL. That wasn't the statement, Senator.

Senator WITHERS. I understood you to make the statement.

Senator DONNELL. No. I quoted from the Supreme Court of the United States, Justice Brandeis—this is on my time, this statement right here:

Neither the common law nor the fourteenth amendment confers the absolute right to strike.

In other words, there are qualifications and restrictions on it. I will give you the citation. It is 272 U. S. 306 LC 311, which I understand is the case holding that there is no constitutional right to call a strike solely for the purpose of coercing the employer to pay a disputed stale claim of a former employee member of the union.

Senator WITHERS. That is foreign to the question at issue, the paying of a stale claim. We are talking about labor.

Senator DONNELL. So am I, and I am talking about the absolute right to strike, which the Court says does not exist.

I am informed I have the floor and I am at this point requesting from this time on the time be charged to the other side.

Senator WITHERS. I believe it was stated, Mr. Whitney, that there were any number of cases where the common law recognized that there was a right to strike. That was the old English law that was not right in America.

Mr. WHITNEY. That is right.

Senator WITHERS. We are talking about your right to strike as being a common law right as old as the Government itself. Am I right about that?

Mr. WHITNEY. I think you are, except I think there were courts that used to interpret unions as being conspiracies in restraint of trade.

Senator WITHERS. That was after the passage of the Sherman Anti-trust Act and they tried to show they were trusts and monopolies, and the courts held that the human equation entered into it and separated property rights from personal rights.

Mr. WHITNEY. That is right.

Senator DONNELL. On my time, may I ask the Senator—and I am not sure of this without checking on it—but does the Senator recall anything in the old common law to the effect that a strike was illegal, as constituting an illegal conspiracy, and that the development later of the law has been that the strike became legal?

If I am not mistaken, that was the course of historical development; although, as I say, I would have to check on that.

Senator WITHERS. I can see how there could be conspiracy in the form of a strike, but I am talking about simply the right to strike.

Senator DONNELL. We will see if we can't find some law on that.

The CHAIRMAN. Before Mr. Whitney leaves the stand and so that I may be corrected in case my deduction is wrong, reference was made to the exemption of the Railway Labor Act from the law.



Now when the National Labor Relations Act was proposed as a bill, the Railway Labor Act was part of the law of the land. At that time the railway labor was handled by the Interstate Commerce Committee in the Senate. Every one knew when the national labor relations bill was before us that there might be a great question about its constitutionality for the simple reason that it did infringe upon a definition laid down in a dictum by the Supreme Court in its description of what constitutes interstate commerce.

Now, the committee, therefore, in order that it would not get into a jurisdictional dispute with another committee in Congress, in order that there would be no question at all about the Railway Labor Act, not wanting to interfere with that, in order that that act would not be brought into hazard by anything which we might do in this National Labor Relations Act, the exemption was made and made advisedly and purposely so that Congress could be guided, so that there would be no question as far as its getting into the courts, and so that there would not be any sort of dispute between one committee in the Senate and another committee.

Now, I think that is the reason for the exemption. There has come, of course, the reorganization of Congress. All labor is now before this committee, so that we would have the right, this committee would have the right to suggest legislation modifying the National Railway Labor Act just the same as it has the right to suggest legislation modifying this act.

In the light of that fact, and if my history is right—and I am pretty sure it is right because I was there and took part in the writing of the National Labor Relations Act—I think we ought to note again why this exemption is here and be sure about the suggestion.

I thought while Mr. Whitney was here we would put him on notice to review those facts, if he would, and then let us know if there is any reason for bringing the first title in because with the reenactment of the National Labor Relations Act the exemption, of course, stands as it does in that act.

MR. WHITNEY. I think, Senator, our position there is that some of the provisions of title I relating to the handling of disputes might complicate procedure under the National Railway Adjustment Board.

THE CHAIRMAN. That is the reason for the suggestion, so that you can preserve, as we tried to preserve in the beginning, the procedures under the National Railway Labor Act.

MR. WHITNEY. Yes; and it seems to be necessary to include title I.

(Subsequently Mr. A. F. Whitney addressed the chairman in a letter as follows:)

BROTHERHOOD OF RAILROAD TRAINMEN,  
Cleveland 13, Ohio, February 23, 1949.

HON. ELBERT D. THOMAS,  
*Chairman, Senate Committee on Labor and Public Welfare,  
Senate Office Building, Washington, D. C.*

MY DEAR SENATOR: On the occasion of the appearance before your committee on February 21, of our witness, Mr. B. A. Whitney, you asked him to advise you more specifically regarding our suggestion on the exemption of the Railway Labor Act from the proposed legislation repealing the Taft-Hartley Act.

We have examined S. 249 in the light of your comments to our witness and we find that S. 249, the bill now under consideration by your committee, is entirely different from the committee print version of S. 249, dated January 29, 1949, which we had under consideration at the time we made our suggestion regarding the exemption of the railroad industry.

I find that S. 249, the copy of which you furnished our witness, proposes completely to reinstate the National Labor Relations Act of 1935, with a minor change relating to the membership of the National Labor Relations Board. In other words, S. 249 would give the same exemption to the railroad industry that it enjoyed under the National Labor Relations Act of 1935, and that is acceptable to us. We note also that many of the legislative subject matters contained in the committee print version of S. 249 are not in the copy of S. 249 which you furnished our witness.

Please be assured that S. 249 in the form presented to our witness is entirely satisfactory to us, as it gives the same exemption to the railroad industry as was contained in the National Labor Relations Act of 1935.

With best wishes, I am

Sincerely yours,

A. F. WHITNEY, *President.*

The CHAIRMAN. There are only a few minutes remaining. The chairman will adjourn the hearing until tomorrow morning at 9:30. Mr. Van Arkel is coming and then Mr. Clarke, I think, since you spoke to me, it will be some time before you are called again. I imagine Mr. Van Arkel will take up all the time tomorrow morning.

(Whereupon, at 5:25 p. m., an adjournment was taken until Tuesday, February 22, 1949, at 9:30 a. m.)





## LABOR RELATIONS

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TUESDAY, FEBRUARY 22, 1949

UNITED STATES SENATE,  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D. C.*

The committee met, pursuant to adjournment, in the committee room, United States Capitol, Senator Elbert D. Thomas (chairman) presiding.

Present: Senators Thomas (chairman), Murray, Pepper, Hill, Neely, Douglas, Morse, and Donnell.

The CHAIRMAN. The committee will be in order.

I have a letter here from the Woodward Governor Co., Rockford, Ill., addressed to the Honorable Paul H. Douglas, which Senator Douglas has requested be made a part of the record. Without objection, it is so ordered.

(The letter referred to is as follows:)

WOODWARD GOVERNOR CO.,  
*Rockford, Ill., February 16, 1949.*

Hon. PAUL H. DOUGLAS,  
*The United States Senate, Senate Office Building,  
Washington, D. C.*

DEAR SENATOR DOUGLAS: The legislative committee of Woodward Governor Co., representing the entire membership of the company, respectfully suggest and urge that any labor legislation adopted by the Congress contain provisions to accomplish the following:

- Protect the public from unnecessary loss due to strikes.
- Provide special emergency procedures to handle national emergency strikes.
- Require of both unions and employer legal responsibility for violation of any and all contracts existing between them.
- Prevent all secondary boycotts and jurisdictional strikes.
- Guarantee to every person the right to work without having to join a union.
- Guarantee to both employer and employee freedom of speech.
- Equalize restrictions for both unions and employers with regard to political contributions.

We would like particularly to call to you attention the disastrous effect that a secondary boycott would have upon our company. Any secondary boycott directed at our company would immediately force a close-down of our entire plant, which in turn would, for all intents and purposes, stop the production of power-producing equipment such as diesel engines, hydroelectric plants, and aircraft engines.

Respectfully submitted.

George Butz, lathe operator, Belvidere, Ill.; Roy Capron, assembly supervisor, South Beloit, Ill.; Woodrow Carson, laboratory technician, Loves Park, Ill.; I. G. Worden, grinder, Rockford, Ill.; Fellmer Ward, draftsman, Rockford, Ill.; Kenneth Jensen, planning department, Winnebago County, Ill.; Charles S. Thomas, attorney, Rockford, Ill.

Senator MORSE. Mr. Chairman, before the witness proceeds I would like to insert in the record two memoranda that I have requested of previous witnesses.

First, Mr. Chairman, in questioning Mr. Denham I asked him whether his office had not taken the position that various rules of the ITU were in violation of the Taft-Hartley Act. Mr. Denham has given me a memorandum on this question, and I ask that it be included in the record.

In brief he states that ITU rules have not been challenged insofar as they pertain to internal organization of the union, but they have been challenged to the extent that the union has attempted to incorporate them in agreements with the employers.

The CHAIRMAN. Without objection, it will be inserted.

(The letter referred to is as follows:)

NATIONAL LABOR RELATIONS BOARD,  
Washington, D. C., February 17, 1949.

HON. WAYNE MORSE,

*Senate Committee on Labor and Public Welfare,  
Senate Office Building, Washington, D. C.*

DEAR SENATOR MORSE: This is in response to your request for a memorandum as to whether the general counsel's office contended in the International Typographical Union litigation that certain rules of that organization restrained and coerced employees in violation of section 8 (b) (1) (A) of the Taft-Hartley Act.

I believe it is fair to sum up the situation by saying that the ITU rules have not been challenged insofar as they pertain to the internal organization and operation of the union. It is true, however, that some 30 rules are challenged in the brief before the Board, filed by the field attorney who handled the American Newspaper Publishers Association case, No. 9-CB-5, to the extent that by insisting upon inclusion of these rules in contracts, the ITU sought to establish terms and conditions of employment that are inconsistent with the congressional policy set forth in the Taft-Hartley Act. I trust the following rather detailed statement will clarify the situation in this regard.

The ITU issues a Book of Laws which contains its constitution, bylaws, and so-called general laws. The constitution and bylaws set forth the provisions relating mainly to the internal organization of the ITU. The general laws, on the other hand, set forth provisions governing the relationships of ITU locals and members with employers, and establish basic conditions of employment to govern shops in which ITU men work. Thus, for example, the general laws set forth the ITU policy adopted on August 21, 1947, to refuse to enter into binding collective-bargaining contracts with employers covering wages, hours, and other conditions of employment, in order to leave the ITU locals and the international free of any contractual obligation under the Taft-Hartley Act which would prevent the union from bringing concerted economic pressure to bear upon employers against employing nonunion printers (art. III, section 1)—although the law specifically prohibits discrimination against employees who are nonunion, as well as against those who are union members. The general laws also contain such other provisions as, for example, that work in composing rooms shall be restricted to journeymen who are ITU members and to apprentices who hold ITU working cards (art. I, section 12; art. III, sec. 11; art. 5, secs. 10, 11; art. VII, secs. 1, 2, and 5; and art. VIII, sec. 1); that the employer's representative for purposes of hiring, firing, handling grievances, etc. in composing rooms, shall be foremen who must be ITU members (art. V, sections 1, 2, and 10); and that ITU members give preference in employment to other ITU members (art. I, sec. A; see also constitution, art. 12). All approved contracts between ITU locals and employers must incorporate by reference these general laws.

No representative of the general counsel, so far as I have been able to discover, has ever contended that rules of the ITU contained in its constitution and bylaws and regulating the internal affairs of that organization are illegal under the Taft-Hartley Act. Only the ITU general laws which, by incorporation in contracts, regulate the relationships of the ITU, its locals and members, with employers and to that extent establish hiring practices and employment relationships in the industry that may be inconsistent with the law, have been questioned.

To illustrate, in the Indianapolis injunction proceeding the ultimate factual issues were whether the ITU had refused to bargain collectively in good faith by adopting a policy that it would not bargain for a conventional contract covering terms and conditions of employment, and had attempted to cause employers to discriminate in regard to hiring practices (1) by adopting and enforcing the so-called no contract policy as a device to prevent the hiring of nonunion printers even though otherwise qualified; (2) by refusing to enter into contracts with employers for a fixed period of time in accordance with the practice in the industry prior to the Taft-Hartley Act, also as a device to prevent employers from hiring nonunion printers who might otherwise be qualified for employment; and (3) by insisting instead that employers either (a) accept "conditions of employment" that were unilaterally determined by the ITU and were intended to continue the compulsory closed shop existing prior to the Taft-Hartley Act, but now declared illegal, or (b) accept the so-called "P-6-A" contract, which was designed to compel employers to discriminate in their hiring practices by holding over their heads the threat of concerted economic pressure after 60 days in the event they hired nonunion printers. The general laws were offered in evidence in the injunction case in order to show the adoption of the so-called no contract policy, and the constitution and bylaws were offered only to demonstrate the authority vested in the officers of the ITU to enforce this policy by disciplinary measures against nonconforming members and locals.

In the contempt proceeding, the issue was whether there was clear and convincing evidence that the ITU had violated the injunction prohibiting continued attempts to cause employers to discriminate against nonunion printers in regard to employment. It was contended that the ITU had done so by demanding contract terms which (1) set up discriminatory standards for determining the qualification of printers on the basis of union membership or nonmembership, by requiring employers automatically to accept as qualified all ITU members, but requiring all other applicants, including former ITU members, regardless of their qualifications otherwise for employment as printers, to take an examination given by a joint employment board over whose decisions the ITU had veto power by reason of equal representation thereon without provision for resolving deadlocks; (2) required hiring and firing to be done exclusively by foremen who were ITU members and bound by membership oath to prefer members of that organization for employment, and (3) placed supervision and control over apprentices in a joint board over which, like the employment board, the ITU had absolute veto power by reason of equal representation thereon without provision for resolving deadlocks. The constitution, bylaws, and general laws were offered in evidence in the contempt case in order to show that, because ITU members were required by their oath of membership under these rules to give preference to ITU members over nonmembers in regard to employment, at least a tie breaker should be provided in the joint employment and apprenticeship boards, and ITU foremen should be relieved of the threat of union discipline for nondiscriminatory performance of their functions in respect to hiring and firing. In addition, because of the inclusion of the general laws in contracts demanded by the ITU, the general laws which require apprentices to be approved by the local union, to be upgraded only upon request of the local union, and to be transferred from one employer to another only with permission of the local union, were referred to as further evidence of the need for a tie breaker on the joint apprenticeship board in order to give prospective employees full freedom as the law requires, in determining whether or not they would join or refuse to join the ITU, without the economic restraint implicit in the system whereby the ITU had control over such matters by virtue of its veto.

In the litigation before the Board, substantially the same approach was adopted in regard to the problem created by the ITU's uniform insistence that its unilaterally adopted general laws be incorporated in agreements reached with employers. But it is true, as was stated at the beginning, that in the brief filed with the Board by the field attorney who handled the national newspaper case there were listed some 30 provisions of the general laws which might be in conflict with the Taft-Hartley Act insofar as the ITU insisted that they be included in contracts governing terms and conditions of employment. Thus, reference was made in these proceedings to the ITU constitution and bylaws to establish the ITU structure and its control over the collective-bargaining relationships of its members and locals, and the pertinent general laws were put in evidence in connection with the allegations that the ITU and its locals had attempted to cause employers to discriminate against nonmembers of the ITU in violation of 8 (b) 2, had refused to bargain in good faith in violation of section 8 (b) (3)



and (1) (A), and had attempted to cause employers to pay for services not performed or to be performed in violation of section 8 (b) (6).

As had been the custom under the Wagner Act in analogous cases against employers, the argument also was made before the trial examiners of the Board, and was adopted by them to varying degrees, that the ITU's entire course of conduct and its violations of sections 8 (b) (2), (3) and (6) had coerced and restrained employees and prospective employees in the exercise of the right guaranteed them in section 7 to bargain collectively through representatives of their own choosing or to refrain and to be free from discrimination as to hiring practices based upon their union membership or nonmembership, in violation of section 8 (b) (1) (A).

In connection with this general subject, I believe your attention should be invited to the trial examiner's recommended order in the Baltimore Graphic Arts case (5-CB-1), which also touches upon ITU laws. The trial examiner recommended that the ITU be ordered by the Board to cease and desist from conduct which, among other things, requires its locals and members (1) to refuse to bargain in good faith, (2) to demand that employers execute contracts which discriminate in regard to employment by making membership in or approval by the ITU a condition of hiring or continued employment, (3) to refuse to bargain on the inclusion, interpretation, or application of the ITU general laws in contracts, and (4) to coerce and restrain employees in the exercise of their rights guaranteed in section 7, particularly by attempting to enforce a compulsory closed shop for the ITU. To effectuate these restraints, the trial examiner further recommended that the ITU be ordered to "Rescind and cease to give effect to any provisions in its constitution, bylaws, general laws, policies, rules, resolutions, decisions, instructions, or directions, which are inconsistent with or in conflict with these recommendations."

I assume that you will wish to include this statement in the record of the hearings. I am, therefore, sending you a copy of this letter for your own files. If you wish any further information in connection with the subjects covered, please do not hesitate to call on me.

Other data you have requested bearing upon cases in which section 10 (j) injunctions have been issued is being prepared, and I hope to have it to you in a few days.

Very sincerely,

ROBERT N. DENHAM, *General Counsel*.

Senator MORSE. Mr. Chairman, I wish to offer for the record a memorandum I have received from Mr. Herzog, Chairman of the NLRB, in response to my request while he was a witness, dealing specifically with the problems that have arisen as a result of the statutory division of authority between the Board and the general counsel.

It supplements the exchange of memoranda between the Board and the general counsel, already in the record. I feel that the memorandum merits careful study.

I want to call attention to two paragraphs, Mr. Chairman, for special emphasis, starting on page 6 of Mr. Herzog's memorandum. I consider this one of the basic questions that this committee should consider in the revision of the Taft-Hartley law, and what I now read supplements testimony already in the record and arguments which I have also advanced, pointing out what I consider to be the imperative need of ending once and for all this tremendous power which the general counsel under the Taft-Hartley law possesses.

Mr. Herzog says on page 6 of his memorandum:

The quality of policy-making and interpretive functions permitted by the statute, as well as the statutory strictures on the Board's supervision of staff, have also had their effect on the preparation of briefs in the courts.

As I stated in my testimony a few weeks ago, the Board early in the life of the Taft-Hartley Act found itself compelled to delegate to the general counsel functions which were lodged in it by the statute, but which it was unable to perform because of the statutory limitation on the personnel the Board could have under its supervision.

Section 10 of the act empowers the Board to seek enforcement of its orders in the circuit courts and the Supreme Court and, by implication, to intervene in

important cases bearing upon the application of the statute in related proceedings brought by third parties. \* \* \* A case in point is *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, decided by the Supreme Court on January 17, 1949. Because the important question of State versus Federal power in the field of labor relations was involved, the Board decided to intervene as amicus when the case reached the United States Supreme Court. The brief, of course, had to be prepared by the general counsel's staff. As originally drafted, it stated as the Board's position on assertion of jurisdiction those very views of the general counsel with which the Board had expressly disagreed. Before the Board could permit filing of the brief in its name, many changes had to be made by the general counsel's staff—with considerable reluctance, as the general counsel took the position that his ideas should prevail.

Even though he was appearing in behalf of the Board, he still wanted his ideas to prevail. To continue:

A similar near-crisis arose on the eve of the filing of the Board's brief in the injunction proceeding against the International Typographical Union.

Although section 10 (j) empowers the Board in its discretion to seek such an injunction, here again the Board felt compelled to delegate that authority to the general counsel—not only for want of a litigation staff but also because the particular power given to it was so closely allied to the general counsel's prosecutory functions. But the power was plainly the Board's, and the general counsel had it by express grant of the Board. The issue was important in this particular case because the union contended that the Board's function was not even delegable.

Yet the general counsel prepared a brief arguing that, despite the language of the statute, the primary authority to apply for such injunction was his by statute and not the Board's. The Board members took issue with this interpretation. We asked the general counsel to argue to the Court that the primary authority was in the Board and that his powers were secondary under the delegation, although properly delegable. The Board members were most anxious not to reveal this intra-family difference to the Court or the union, lest the latter use it to weaken the agency's argument. Yet it was only after the Board announced that it would feel compelled to file a separate brief—

Imagine this, Mr. Chairman, the Board finally had to take the position that, if the general counsel didn't carry out the Board's instructions in this matter, the Board itself would file a separate brief—

that the general counsel agreed to present, in the alternative, both his arguments and those of the Board to the Court (without disclosing the difference in source). It should be noted that the Court expressly rejected the general counsel's theory in favor of the Board's interpretation.

Mr. Chairman, I have taken the time to introduce this because I think the American public ought to know that this seemingly amicable relationship that has existed between the general counsel and the Board doesn't exist in fact. It required this hearing and a specific request by me to the Chairman of the Board to bring out, as this memorandum discloses, that all hasn't been harmony behind the scenes between the Board and the general counsel. It never will be under any statute that calls for this kind of division of power. In addition, the memorandum supports my contention that we should get rid of that delegation in the new law that we pass.

THE CHAIRMAN. Without objection, it will be made a part of the record.

(The memorandum referred to is as follows:)

#### SEPARATION OF FUNCTIONS IN PRACTICE—COMMENTS ON SECTION 3 (d) OF THE LMRA

##### I

In my testimony of February 2, I indicated that over 18 months' experience under the LMRA had demonstrated the validity of many of the comments we made

in 1947 when separation of functions was under consideration by the Eightieth Congress.

I referred specifically to our concern in 1947 that a division of policy-making functions between an administrator (so-called in the House bill) and the Board would cause friction, delay, uncertainty, and unnecessary litigation. As an example of the materialization of that fear, I pointed to the difference between the Board and the general counsel on the important question of assertion of jurisdiction. General Counsel's Field Letter No. 52, reproduced in the typewritten record at pages 360-362, reflects that difference, as it does the general counsel's policy with regard to the Board's determinations in this field. Exhibits A1-7, attached to this memorandum, constitute the correspondence between the Board and the general counsel on this subject. As I stated in my testimony a few days ago, we have as yet had no reply to our last communication to him of January 26. Until a common understanding is reached between us in this field of operations, both representation and unfair-labor-practice cases involving fairly local enterprises will continue to be instituted by the general counsel only to be dismissed by the Board many months hence.

## II

Another difference of opinion on the interpretation of the statute has centered about the extent to which State laws on the closed shop should prevail over the Federal law. Section 14 (b) of the LMRA provides that:

"Nothing in this act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is *prohibited* by State or Territorial law." [Italics supplied.]

In a proceeding instituted under section 9 (e) for a union-shop authorization election, the Board decided that a State law which merely regulated the closed shop but did not outlaw it was not within the intent of the word "prohibited" as used in section 14 (b). The Board thereupon directed that an election be held in the regulatory State without regard to the more restrictive requirements of the local law.<sup>1</sup>

After the Board issued its decision, the general counsel, who had himself interpreted the section in question as being equally applicable to regulatory laws, sent a letter to the field personnel instructing them to comply with the Board's decision. Two weeks later, he countermanded these instructions.<sup>2</sup>

The result is that employees in regulatory States will be denied the privilege of the union shop unless their representatives appeal directly to the Board from the refusal of the regional director to hold union-shop authorization elections in those States. And, should the employer and the union in any such State nevertheless enter into union-shop agreement without an appeal to the Board from the regional director's refusal to permit a prior authorization election, each would be guilty of an unfair labor practice.

In a complaint case instituted by the general counsel against the employer for the discharge of an employee pursuant to such union-shop agreement, the Board would have to hold that, notwithstanding its own contrary interpretation of the status of the State law, the discharge was not protected by the proviso to section 8 (a) (3) because, due to the general counsel's independent policy, no election authorizing the union shop had been held under Federal law, even though all other conditions of the proviso had been met.<sup>3</sup> Similarly, the union would be found to have violated section 8 (b) (2) for causing the employer to enforce

<sup>1</sup> *Matter of Northland Greyhound Lines, Inc.* (80 NLRB No. 60, decided November 12, 1949).

<sup>2</sup> The original instructions and the countermanding telegram are attached hereto as exhibits B-1 and B-2, respectively.

<sup>3</sup> Sec. 8 (a) (3) provides that it shall be an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a labor organization: *Provided*, That nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in sec. 8 (a) of this act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in sec. 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in sec. 9 (e), the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such agreement."



the agreement.<sup>4</sup> Either or both would be required to make restitution to the discharged employee for wages lost.<sup>5</sup>

### III

Disagreement between the Board and the general counsel on the meaning of the non-Communist affidavit provision of section 9 (h) developed early in the administration of the Taft-Hartley Act. The regional director, on instruction from the general counsel, had refused to proceed in a representation case only because the officers of the American Federation of Labor, of which the international union in question was a member, had failed to file such affidavit. It was the general counsel's view that section 9 (h) was applicable to the officers of the parent federations; he instructed the regional offices to act accordingly in all instances. While the general counsel's interpretation would not have been reviewable by the Board in a complaint case, this was a representation proceeding, in which his authority to act derived from the Board's formal delegation to him of its power. An appeal was therefore taken directly to the Board from the ruling of the regional director. The Board enunciated a contrary rule and held that the officers of the parent federation were not required to file the non-Communist affidavits.<sup>6</sup>

While the press and the A. F. of L., then meeting in convention, speculated on whether the new statute would break down at this early point, the general counsel fortunately announced that he would acquiesce in the Board's interpretation not only in representation cases but also in unfair-labor-practice proceedings. As he has final, unreviewable authority to proceed in the latter cases, he might have declined to conform to the Board's ruling in that area of his jurisdiction. If he had chosen to take this position, the Board would never have been able to reverse him and apply its own policy, for no complaint could have issued upon which it might later have passed in a formal decision. Although this did not transpire in this instance, the potential danger reveals the weakness of having a two-headed regime.

Whether the general counsel, in issuing or refusing to issue complaints, has been guided by Board doctrine on other points is difficult to ascertain. His authority is final and unreviewable, and he need not make known to the Board the nature of his action or the reasons which prompt it.

### IV

The duality of policy-making and interpretative functions permitted by the statute, as well as the statutory strictures on the Board's supervision of staff, have also had their effect on the preparation of briefs in the courts.

As I stated in my testimony a few weeks ago, the Board early in the life of the Taft-Hartley Act found itself compelled to delegate to the general counsel functions which were lodged in it by the statute, but which it was unable to perform because of the statutory limitation on the personnel the Board could have under its supervision.<sup>7</sup>

Section 10 of the act empowers the Board to seek enforcement of its orders in the circuit courts and the Supreme Court and, by implication, to intervene in important cases bearing upon the application of the statute in related proceedings brought by third parties. But the litigation staff is under the supervision of the general counsel. The Board therefore expressly ceded to the general counsel the function of defending its orders and its powers in the courts. A case in point is *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, decided by the Supreme Court on January 17, 1949. Because the important question of State versus Federal power in the field of labor relations was involved, the Board decided to intervene as amicus when the case reached the United States Supreme Court. The brief, of course, had to be prepared by the general counsel's staff. As originally drafted, it stated as the Board's position on assertion of jurisdiction those very views of the general counsel with which the Board had expressly disagreed. Before the Board could permit filing of the brief in its name, many changes had to be made by the general counsel's staff—with con-

<sup>4</sup> Sec. 8 (b) (2) makes it an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3)."

<sup>5</sup> Sec. 10 (c) empowers the Board to assess back pay against "the employer or labor organization, as the case may be, responsible for the discrimination."

<sup>6</sup> *Matter of Northern Virginia Broadcasters, Inc.* (75 NLRB 11).

<sup>7</sup> The agreement of delegation is attached hereto as exhibit E.

siderable reluctance, as the general counsel took the position that his ideas should prevail.<sup>8</sup>

A similar near-crisis arose on the eve of the filing of the Board's brief in the injunction proceeding against the International Typographical Union.<sup>9</sup>

Although section 10 (j) empowers the Board in its discretion to seek such an injunction, here again the Board felt compelled to delegate that authority to the general counsel—not only for want of a litigation staff but also because the particular power given to it was so closely allied to the general counsel's prosecutory functions. But the power was plainly the Board's, and the general counsel had it by express grant of the Board. The issue was important in this particular case because the union contended that the Board's function was not even delegable.

Yet the general counsel prepared a brief arguing that, despite the language of the statute, the primary authority to apply for such injunction was his by statute and not the Board's. The Board members took issue with this interpretation. We asked the general counsel to argue to the Court that the primary authority was in the Board and that his powers were secondary under the delegation, although properly delegable. The Board members were most anxious not to reveal this intrafamily difference to the Court or the union, lest the latter use it to weaken the agency's argument. Yet it was only after the Board announced that it would feel compelled to file a separate brief that the general counsel agreed to present, in the alternative, both his arguments and those of the Board to the Court (without disclosing the difference in source). It should be noted that the Court expressly rejected the general counsel's theory in favor of the Board's interpretation.

## V

The statutory bifurcation of authority of the general counsel and the Board, vesting in the former final power to initiate unfair-labor-practice cases while leaving in the Board jurisdiction over representation matters, has posed some strange dilemmas for the Board.

Section 9 (c) (3) declares that "Employees on strike who are not entitled to reinstatement shall not be eligible to vote" in an election. Under section 3 (d), the general counsel has final authority to issue complaints. While the former provision might at first glance appear to vest in the Board authority to determine in a representation case the voting eligibility of strikers, analysis will show that the question can in certain circumstances appropriately be resolved only in an unfair-labor-practice case. This is so because in many instances the eligibility of a striker for reinstatement turns on whether the strike was caused by an employer-unfair-labor practice. If it was, the striker's job must be preserved and he may not be replaced permanently.

Faced with this issue in passing upon challenged ballots, the Board concluded that the apparent grant to it of authority to determine in a representation case whether the strike was caused by an unfair labor practice was, in terms of the realities of the statute, a mere illusion. It had to be bound by the general counsel's action in issuing or refusing to issue a complaint before the legality of the employer's conduct could be passed upon. In the particular case,<sup>10</sup> the general counsel had refused to complain against the employer. The Board therefore had no choice but to find that the strike was an "economic" one, and that the strikers who had been replaced were not entitled to reinstatement and consequently not eligible to vote.

## VI

Entirely aside from policy differences in the handling of cases, the separation of functions has created various "housekeeping" difficulties. While the statute gave the general counsel supervision over field personnel and attorneys (other than legal assistants to Board members), it was silent with respect to other employees of the agency concerned with budget, accounting, library, telephone service, procurement and allocation of space, messenger service, and similar internal operations.

It was readily apparent to the Board members and the general counsel that considerations of economy required that such service units be utilized jointly.

<sup>8</sup> The opinion of the Supreme Court is attached hereto as exhibit F.

<sup>9</sup> *Evans v. International Typographical Union* (76 F. Supp. 881 (D. C. Ind.) (attached hereto as exhibit G)).

<sup>10</sup> *Matter of Times Square Stores Corp.* (79 NLRB No. 50 (attached hereto as exhibit H)).

Otherwise, it would have been a costly undertaking to establish separate parallel staffs of clerical, administrative, and fiscal officers and employees for the Board and the general counsel.

Rejecting a proposal for parallel staffs and recognizing that the statute permitted the Board to retain such functions, the Board was faced with three alternatives: (1) To operate the clerical, administrative, and fiscal divisions itself and make the services of such divisions available to the general counsel; (2) to delegate the operation of such divisions to the general counsel, who would make their services available to the Board; or (3) to operate such divisions jointly with the general counsel. As the result of discussion with the general counsel, the Board adopted the second alternative.

There have been occasions upon which the Board regretted this arrangement. It is entirely possible, of course, that had the Board adopted the first alternative, the general counsel too would have encountered occasions upon which he would have preferred to have such services under his own supervision. It has been apparent that the Board and the general counsel were wise in rejecting the third alternative—joint supervision of the "housekeeping" services; efficient operation of the services with administrative officials responsible simultaneously to two separate authorities would have presented many control problems requiring interminable conferences between Board members and general counsel regarding matters which are of only incidental importance in the over-all administration of the statute.

The problems involved in budget making are obvious in a bifurcated agency. The Board members and the general counsel have not engaged in any dispute over allocation of funds within the agency, as we have all been economy-minded. The absence of dispute, however, results more from the desire of the Board and the general counsel to avoid interference with each other's activities than from agreement on the wisdom of all expenditures. What differences of opinion have arisen between the Board and general counsel thus far have been reconciled within the agency. Had Congress cut appropriations for the agency below the levels recommended by the Bureau of the Budget, however, it is entirely likely that long and intensive discussions would have been required to resolve the questions which invariably arise whenever a reduction in personnel is needed to stay within the appropriation limits.

In connection with operation of such services as the stenographic pool, messengers, duplicating shop, and file room, the problems have not been insurmountable. There have been difficulties in connection with determination of priorities, however, which could have been resolved more expeditiously had the agency been integrated rather than divided. With the general counsel's staff and the Board's staff simultaneously relying upon the same service personnel for performance of rush jobs, the service personnel is frequently in the unfortunate position of accommodating one portion of the agency at the expense of the other.

The Board recommends, as indicated in my testimony, that the present system of separation be eliminated.

SENATOR MORSE. I ask also to have inserted in the record a letter which I have received from an ex-conciliator of the Conciliation Service in regard to the return of the Conciliation Service to the Department of Labor. I do not agree with the conclusions reached by the writer of the letter, but I think that his views are entitled to be incorporated in the record.

THE CHAIRMAN. Without objection, it will be inserted.

(The letter referred to is as follows:)

WASHINGTON, D. C., February 12, 1949.

HON. WAYNE MORSE,  
Senate Office Building.

DEAR SENATOR MORSE: Continuing our conversation of last Thursday in the Senate reception room concerning return of the Conciliation Service to the Department of Labor, where it historically belongs, the subject is so big and of such grave consequence to the continued existence of the Labor Department that I approach it with considerable trepidation. But please bear with me and I will do my best.

The Conciliation Service operated with great success in the Department of Labor from 1913 to 1946, when War Labor Board personnel took over the helm following expiration of the Smith-Connally Act. I believe you are familiar with



some of the chaos and turmoil arising after the residue of the WLB took over. Had it not been for this unfortunate circumstance, or set of circumstances, I believe the Conciliation Service would have ridden out the storm occasioned by passage of the Taft-Hartley Act and remained safely at anchor in the Department of Labor, its birthplace.

In my opinion, the best that can be said for proponents of removal of the Service from the Labor Department is that they swapped the devil for a witch, assuming (which I do not) that the Conciliation Service had to be tossed into the maelstrom of labor legislation prevailing at the time.

If you recall, I told you last Thursday that I thought the prestige of the Secretary of Labor behind a conciliator is of inestimable value in settling labor disputes. I found this to be true while serving as a commissioner of conciliation, especially during the war years of 1943, 1944, and 1945.

They won't build any monuments or write heroic songs about the part the Conciliation Service played in maintaining labor peace and keeping the wheels of industry turning during the war, but the conciliators did a magnificent job in this respect, often working night and day, Sundays and holidays, for weeks on end. They couldn't have been successful as they were if they had not been able to win the confidence of both management and labor, which they did almost uniformly. How could they have done this if management had been suspicious of their motives due to their connection with the Department of Labor?

Only rarely did I encounter hostility from this source. Almost without exception I was accepted for what I tried to be, an honest, sincere individual, trouble-shooting strikes and strike threats, and withal seeking to create a better understanding between the boss and his employees, and vice versa.

It took generations of painstaking work to bring the Department of Labor into existence; mediation is indubitably a part of the warp and woof of the Department, its very lifeblood. At any rate, removal of the Conciliation Service severed a vital organ, leaving the victim in a badly crippled condition.

Boiled down, the act of 1913 creating the Labor Department provided for two essential functions, namely:

1. Foster, promote, and develop the welfare of wage earners.

2. Mediate labor disputes (whenever in the judgment of the Secretary the interests of industrial peace so required).

Thus, to take away the Secretary's right to mediate industrial disputes destroys one of his principal functions and violates a fundamental concept of the framers of the act (in my opinion).

How else could the Secretary better promote the welfare of wage earners than by using the influence and prestige of his office to mediate their disputes? Bearing in mind always, Senator, that the principal definition of the word mediate is "to interpose as a mutual friend between parties."

This is voluntarily mediation, which operated successfully for 34 years, 1913 to 1947. The Taft-Hartley Act replaced this system with compulsory mediation, which is considered by many to be just as repugnant to industrial harmony as compulsory arbitration.

I regret very much to be at variance with such a splendid gentleman as Hon. Cyrus Ching, whom I admire very much. He is a true conciliator from the heart out—all of his 5 feet 7½ inches.

Thanking you for your patience and kindness if you have read this far, and hoping that my thoughts expressed here may be of some assistance to you in reaching a decision on this all-important matter, I am,

Most respectfully yours,

JAMES I. CROCKETT.

The CHAIRMAN. The chairman just wishes to say this: The point is not, as he sees it, a question as to whether a conflict in personalities has taken place between the Board and its counsel, but whether the law is written in such a way that that conflict is inevitable.

Now, when the National Labor Relations Board was set up, it was surely set up as a single institution, an administrative board to take care of certain functions on the part of the Government of the United States. It did not set up a dual board; it did not set up conflicting authority within its own organization.

Now, then, the question resolves itself into this one: From the standpoint of attempting to write legislation to govern the Board in the

future, has the law brought about a conflict of authority which shouldn't exist in any administrative body? If it has, then the law is not good and should have our attention.

I thank the Senator from Oregon for bringing this matter before us.

Senator MORSE. That is completely my position. I don't raise this because of any conflict of personalities that may exist. I don't know about that. I bring it only to point out the conflict between points of view over jurisdiction which does exist between the general counsel and the Board, and I think it is bound to exist whenever we pass any law such as the Taft-Hartley law that excepts the National Labor Relations Board from the uniform provisions of the Administrative Procedure Act of 1946.

The CHAIRMAN. There is another point that comes to my mind, which I am going to ask about for the sake of seeking information.

The minute the right to get into the district court was established, the act itself immediately did away with the ordinary appeal processes and put the National Labor Relations Board on a level which it ought not to have occupied. That is, the appeals to the courts of the United States should go from an administrative board which has authority to act in quasi-judicial matters to a court which is definitely upon a superior plane instead of upon an original jurisdiction plane.

Senator MORSE. I think the chairman is completely right. If we will study our judicial review procedure, we will find that the circuit courts of appeals have as one of their primary functions hearing appeals from administrative law tribunals. I think we ought to return to that system under the new law.

May I say on that point I think we ought also to give consideration to the question of whether or not we should give greater finality on the local level, the regional level, for the determination of facts. I think one of the reasons that you have this inexcusable and inefficient log jam of delay down here in the National Labor Relations Board is because we have not permitted sufficient delegation of authority on the regional level for the determination of questions of fact.

The idea that we have to wait from 18 to 24 months to get a case finally litigated through the National Labor Relations Board is inexcusable. You cannot handle labor problems that way.

I hope in our new law that we can do something about delegating authority to make final findings of fact on the local level.

The CHAIRMAN. The Senator will find that that point, while it was merely a point in government, I did not debate as a question in law at all, but in the discussion of the matter in regard to the passage of what became the Taft-Hartley Act those things were pointed out as things which would be inevitable unless we were careful about what we were doing.

Mr. Van Arkel, we will hear from you now.

**STATEMENT OF GERHARD P. VAN ARKEL, ACCOMPANIED BY  
HENRY KAISER, OF THE FIRM OF VAN ARKEL & KAISER, WASH-  
INGTON, D. C.**

Mr. VAN ARKEL. My name is Gerhard P. Van Arkel, and I am a member of the firm of Van Arkel & Kaiser. My associate, Mr. Henry Kaiser, is here, and we are here in the interest of repealing our means of livelihood.

I must say this colloquy has been music to my ears. It makes a good bit of my statement superfluous, since the Senators find themselves in complete agreement with my views.

I would like to footnote Senator Morse's one point about the ITU case you mentioned. I was not aware until you read that letter of this division which had existed between the Board and the general counsel. In August of 1947, shortly after the passage of the Taft-Hartley Act, the Board and the general counsel entered into a confidential understanding which delegated this power to seek injunction to the general counsel.

That memorandum was never made public until we raised this point in court some 6 months later in February of 1948. Now it seems to me that the Board did an injustice to litigants in not informing them that it had delegated this power to the general counsel, and it was without knowledge of that delegation that we raised the point in court.

But I point out as a footnote to what you have already observed, that the mere existence of this duality of function may and did in our case prejudice litigants by not informing them accurately of what delegations of power there have been and who is entitled to bring an action.

It is another corollary of a division of functions.

Senator MORSE. I want to say it happens to be my personal opinion that that did not represent fair procedure on the part of the National Labor Relations Board. I see no reason why any administrative tribunal, whether it is that Board or any other, shouldn't since it is a public body, make public all of the arrangements that it has in regard to the delegation of authority.

Mr. VAN ARKEL. We thought the Administrative Procedure Act required that, Senator, and so argued.

Senator MORSE. In my opinion just decent procedure calls upon a board to make public announcement of any delegation of authority that it may make. Board members are there only as servants of the public, and lawyers appearing before them are entitled to know what procedures they are following. In my judgment the Board's conduct in that case was subject to serious question as far as legal properties are concerned.

Mr. VAN ARKEL. That was exactly the point we raised, Senator.

Mr. Chairman and members of the committee, I appear here as a former general counsel of the National Labor Relations Board and as a practicing attorney since the passage of the Taft-Hartley Act, representing labor organizations. I have consistently been opposed and still am to the Taft-Hartley Act because I feel that that act is unfair, unworkable, and one-sided.

I would like to suggest to the committee one important point, which it seems to me has not adequately been brought out, and that is that the Taft-Hartley Act cannot be discussed section by section and line by line. It is a piece of working machinery, it is not isolated scraps of metal, a lot of isolated sections of law, and in considering the Taft-Hartley Act one has to consider it in its total impact and not in isolated sections.

Now, without reading the statement I have here, it has been my observation and continues to be my judgment that the Taft-Hartley Act took the Wagner Act and so slanted each of many provisions, per-



haps 30 or 40 provisions, that when you got through with the machinery which the Taft-Hartley Act set up, you got nothing out at the end which could conceivably be of any benefit to workingmen or labor organizations.

If you take an act and make enough little changes in it, each slanted in the same direction, the end product is going to be useless. So I would say that the Taft-Hartley Act, for all practical purposes, repealed the Wagner Act by gumming up the machinery and by a lot of little wrinkles which deprived labor of any possibility of effective relief which it previously had under the Wagner Act.

Now I think that labor could have lived with the repeal of the Wagner Act. Labor organizations existed long before the Wagner Act was passed, and I have no doubt that they could have continued to live without it.

But what the Taft-Hartley Act did was to go much further than merely making the Wagner Act an ineffective remedy for employer unfair-labor practices. It threw a Federal protection, through the use of the injunctive power and unfair-labor practice procedures, around certain asserted employer rights and denied unions the right to strike in protest against the exercise of those new asserted employer rights. Now those rights which were given employers were precisely rights to break unions. In the first place, an employer can very easily break a union by the unlimited freedom which the Taft-Hartley Act purports to give him to replace union men with nonunion men. To an extent it imposes on the employer a duty to replace union men with nonunion men, and in any event, it gives him the practical and effective right to replace union employees with nonunion employees, thereby depriving union members of their jobs and eventually of their union, and it gives the employer the possibility of injunctive relief and Federal aid in a program to displace union workers in his plant.

At the same time it allows an employer to assign work which has been done by union men—I am now speaking of section 8 (b) (4) (D)—to take work done by union men and assign it to nonunion men in another trade, craft, or class, and the union is then forbidden to strike against the employer's action in taking work from union men and giving it to nonunion men.

Another simple way to break a union, which is now protected by Federal statute.

Similarly, the statute denies union men the right to strike against employer demands that they work on struck goods or substandard goods or nonunion goods, and I need not point out that a group of employers working in concert can very effectively, by taking the struck work of one plant and assigning it to another employer to perform, denying the union the right to strike and refuse to work on those goods, break up a labor organization in any locality or in any industry.

Now it must be self-evident that the assurance of Federal support in union-busting activities is extremely valuable to employers even where it is not exercised, because the possibility that that may be at any time invoked cautions unions that they must behave themselves, tread lightly, and speak softly, or the employer may exercise these asserted rights under the Taft-Hartley Act to rid his plant of that organization entirely.

For those reasons I suggest that the Taft-Hartley Act positively discourages collective bargaining. The crucial point which every union must face is the question of how well it can withstand attacks that are made upon it, and if the employer is not only given a right to make an attack upon it, but is given Federal support in that kind of activity, a union's possibility of surviving, of course, is effectively terminated.

The Taft-Hartley Act in effect tells American workers that collective bargaining is not a free right of free men in a democratic society, but is a privilege accorded by the Government, which can be conditioned in any way that the Congress sees fit and which may be withdrawn or withheld at any time.

Now, there are many subjects that I would like to cover, but necessarily I have had to confine myself to a few major points, which it seems to me have not been perhaps adequately covered in the discussions of witnesses before your committee.

First, you have had competent witnesses from industry and labor ranks who have discussed the question of the closed shop. The decisions of the Supreme Court, it seems to me, leave little room for doubt—decision of January 3 of this year—that the Congress has the effective power, if it desires to exercise it, to outlaw the closed-shop agreement. But the question of the legal question, the real legal question is not: Shall we permit or deny the closed shop agreement? The question goes much deeper than that. The real question is: Have union men the right to refuse to work with nonunion men?

Because the closed-shop agreement is no more than the symbol of the right of union men to refuse to work with competing nonunion men.

Now, there isn't any doubt, I think, that constitutionally union men individually or in concert may quit because they object to working with nonunion men, and section 502 of the Taft-Hartley Act specifically spells out that right of men to quit because they do not like to work in the company of men who are objectionable to them.

The CHAIRMAN. Mr. Van Arkel, may I break in there?

Mr. VAN ARKEL. Yes, of course.

The CHAIRMAN. Aren't you leading us down quite an alley there by that kind of argument for the closed shop and letting the closed shop rest on that sort of arrangement?

Does any workman have the right to say, "I am not going to work with an Englishman or with a Chinaman or with a man who has red eyes or green eyes or a bald head?"

Mr. VAN ARKEL. I think, Senator, he has exactly the same right that an employer has to say, "I am not going to hire an Englishman."

The CHAIRMAN. Let us not get onto anyone else's right. Let us keep with the logic of your assertion.

Now I myself would feel in a very hazardous position in going onto the Senate floor and arguing the story of the closed shop on just that narrow basis, namely that every man has a right to decide with whom he is going to work. How in the wide world could you ever run a railway on that kind of theory?

Mr. VAN ARKEL. I think it is done every day, Senator. People certainly quit their jobs because they don't like their fellow employees.

The CHAIRMAN. I am not going to work because I don't like the

conductor and I don't like the motorman and I don't like the kind of passengers they carry.

Mr. VAN ARKEL. Senator, I am confident that happens every day in American industry, that all sorts of people quit their jobs because they object to fellow employees. They may object to them for any one of a variety of reasons.

The CHAIRMAN. They quit their jobs as individuals.

Mr. VAN ARKEL. That is true.

The CHAIRMAN. And they lose their identity immediately because if a closed-shop group decides it shall not take a stand of that kind, why, then what is the individual to do? He either has to get out of the closed shop, which brings him to the horn of another dilemma, or he has to quit working altogether.

While I know that what you are saying is the commonest kind of argument used, I believe that if you think it through in its complexities in this extremely complex life we are leading—shall I take my money out of a bank because I don't like the bank president? I have the right. But what happens?

You see, when you argue a thing just from the standpoint of right, you bring society to an end, an absolute end.

It is like the very interesting story told to us the other day, that if you enter marriage on a basis of contract and the contract is so wide that you cover every detail of life, that is not satisfactory.

Now, I think it is all right for you to defend the closed shop—I am going to defend it, but I am not going to defend it just upon a man's right to decide with whom he is going to work, because society just stops if you stay in the realm of right, and there are no rights unless there are a few responsibilities and a few duties, and rights become important because they are entered into on the basis of some sort of sacrifice. That is, I give up something in order to have these rights. Democracy just ceases to exist the moment you take from it the idea of common consent, because then freedom becomes complete license and nothing is held together. Man in his very nature has to get along with other men, and of all the institutions which we have had which amount to anything—and the closed-shop idea is an awfully good idea and a good institution, I am not arguing that, but it is not based upon the theory of absolute right, absolute individual right, because it falls by the wayside.

You may be able to argue in that way in the law court where there are absolute justices and all the rest of it, but by getting the absolute justice they destroy justice, and that is the history of man—and you know it—therefore, I think that those of us who have to defend this proposition ought to be on the alert to detect a narrow view of what constitutes a right, knowing that to make it into an absolute, we would bring about the destruction of that which we are trying to defend.

That is all "free for nothing" and everything.

Mr. VAN ARKEL. I am very grateful.

Senator HILL. Whose time was that on, Mr. Chairman?

Senator MORSE. Yours.

Mr. VAN ARKEL. I am grateful for the admonition, but I would like to observe this: that I also feel in legislating and also in arguing law cases one is constantly facing the problem of the relative importance of rights.

The CHAIRMAN. Now, you are talking sense; excuse me.



Mr. VAN ARKEL. I would suppose that the right which we have considered most valuable and most sacred in this country and which we are least willing to infringe is the right of a man to quit his employment for any reason, no reason, bad reason, good reason. That is an important right in our democratic society.

The CHAIRMAN. That has never been observed in any place at all. Does a man who is responsible for the flooding of a mine, for instance, and taking water out of a mine, have a right just to quit and leave the faucets on? He hasn't that right.

Mr. VAN ARKEL. I don't think you would say that that man had to be anchored to his job for as long as there were faucets in the mine.

The CHAIRMAN. Not anchored to his job, but I think you always will find through the whole realm of industrial relations responsibilities, and when you get into the absolute you may ruin all rights.

What kind of engineer would it be who would jump his train and leave the engine running because he had a right to quit any time, anywhere, and allow that engine to go through the switches and all the rest?

Of course, I am arguing a ridiculous proposition, because no human being would ever stand on a right in that way, but that is where you get to, if you argue these things on absolute rights. There is no absolute right when once you recognize the existence of society. There just isn't an absolute right because you have a conflicting of rights in everything you do, and when you have a conflict of rights, the settlement comes in some hazy place up here in the realm of the highest kind of argument, not where society works, and I think you can never do a greater injustice, either to employers or to employees, than to lead them into that place where they stand for these absolutes which do not and cannot exist.

Mr. VAN ARKEL. Very good, Senator, but if I can just point this out: One of the factors in this whole situation—let us get away now from talking of rights and I will get into the field where I shouldn't be; namely, the question of the practical problem of the closed shop, which I had hoped to avoid.

It is true that, for very good reasons historically, union men have felt their craft and their union is weakened if they consented to work in the company of nonunion men. It is an old tradition and it is a very strongly ingrained tradition.

Now, if we recognize that men have the right to leave their employment because they are exercising a tradition of which they are proud and which they hold for the best of reasons, then I suggest that we cannot, consistent with the Constitution and consistent with the right of a man to leave his employment, apart from the question of the engineer or the man flooding the mine, pass effective legislation which will compel men to remain at work in the company of nonunion men.

All I am attempting to say here is that as long as the constitutional guaranty against involuntary servitude persists that union men will de facto insist upon and maintain closed-shop conditions, closed-shop agreements or not.

The CHAIRMAN. That is all very fine, because you have stayed in the realm of the right which exists to choose your friends in the union and the rest of it, but that is not an absolute right.

Mr. VAN ARKEL. Senator, you are well beyond me in philosophical approaches to these problems, and I just can't meet you on that ground.

I do think I can, however, safely assert—or, let me put it this way: that I think the Taft-Hartley Act has put employers in an intolerable position on this issue because it has purported to say to them, "You must hire nonunion men under certain circumstances."

The CHAIRMAN. That is fine. The authors of the Taft-Hartley Act knew what a closed shop was.

Mr. VAN ARKEL. I hope they did.

The CHAIRMAN. And they wanted to ban probably a closed shop. Let's say they did. But their logic never got out of the realm of just destroying a closed shop, and the argument for doing it would be just as invalid on their part as if they got out and were to take the stand, you see, that a man has an absolute right to be free from any union restraint, and so on.

And so you find that if you get away from your original premises in your logic and in your argument on either side, either for or against you are arguing about things which do not exist. Let's stay within the realm of the closed shop as such—

Mr. VAN ARKEL. Very good, Senator.

The CHAIRMAN. And not get either the closed shop upon a big high precipice where it cannot stay or management upon a like big high precipice.

Mr. VAN ARKEL. I was merely trying to point out what seems to me to be a basic dilemma which is raised by the Taft-Hartley Act, which on the one hand purports to lay on employers the duty to hire nonunion men and, on the other hand, recognizing the right of individuals to quit; for that reason, facing him with the chance that he may be deprived of an experienced work force if he hires nonunion men, and that, therefore, the purported ban of the Taft-Hartley Act on the closed shop is an unrealistic ambition, which cannot be realized in practice, and, as Senator Morse brought out in his questioning, has, in fact, not been realized.

Employers have continued traditional hiring practices, despite the statute, for the best of practical reasons, and I see no way of solving that dilemma short of saying to men, "You are now denied your constitutional right to quit your employment, because of the hiring of nonunion men."

That is the only legal point I wanted to bring out.

Senator NEELY. Mr. Chairman, may I interrupt?

The CHAIRMAN. Yes.

Senator NEELY. I should like to express the pious hope, Mr. Chairman, if I may without seeming to be impertinent, that you will state whatever additional reasons you have for believing in the closed shop, because I fear that 90 percent of the newspapers of the country that are very much for the Taft-Hartley Act will feature what you have previously said under headlines something like this: "Chairman Takes Issue With Witnesses Against the Closed Shop."

Mr. Chairman, I agree with what the witness has said. Let me answer a question you asked regarding a bank.

If I dislike the cashier, or the president, what would I do? Take my money out? Yes, that is what 999 people out of every 1,000 in the United States would do. If a woman who doesn't speak to her neighbor becomes cashier of a bank, do you think that the woman, on non-speaking terms with the cashier, would deposit her money in that bank? Of course not.

Let us substitute realism for philosophy. I hope that every available weapon, including the closed shops, will be used to prevent the destruction of legitimate labor union.

I want to help get the toilers of this country out of the Egyptian bondage of the Taft-Hartley law, and if we have to go counter to some idealistic theory to get it done, let's put humanity above the theory and proceed to the desired result.

That's all I have to say, Mr. Chairman.

Mr. VAN ARKEL. I may say, Senator, I think you paint a very attractive picture.

If I may, I should like to discuss briefly some facets of the temporary injunction under section 10 (j) which it seems to me have not, perhaps, been adequately brought out. Many witnesses have discussed the injunction sections in general, and the whole issue of course, was the subject of intense debate for many years and one thought it had been settled when the Norris-LaGuardia Act was adopted.

Many of the evils of injunctions before the Norris-LaGuardia Act was passed have been reintroduced by the Taft-Hartley Act.

As Justice Frankfurter points out in "The Labor Injunction," one of the chief points which irritated labor about injunctions before the Norris-LaGuardia Act was they were issued only on a prima facie case with labor having no fair opportunity to test the issues.

That is, by the Taft-Hartley Act, not only allowed to the courts but is made mandatory on them by the section of the Taft-Hartley Act which says that the court shall issue an injunction if the agent of the general counsel has reasonable cause to believe that an injunction should issue.

The net result of that has been to restore the pre-Norris-LaGuardia Act standard of evidence, namely, the prima facie case, the probability, the reasonable cause to believe.

I can tell you, Senators, what you must already know, that to go into court and be told beforehand that the judge is going to decide every doubtful issue against you and is going to resolve every conflict in the case against you is a terrifically heavy burden to carry in litigation.

Now, that is not only discretionary with the district court, it is mandatory under the Taft-Hartley Act that they approach the cases with that view. The general counsel of the Labor Board went even further. I am reading from the brief filed in the case of *Evans v. I. T. U.* on February 7 last year where he said this, and I am quoting from the brief:

Thus, evidence going to defense against the unfair labor practices charged is immaterial and irrelevant in this proceeding \* \* \* matters of defense and mere denials are not admissible in this proceeding. \* \* \* Conflicts in evidence and other matters of defense are for the Board's consideration.

So that in this case the general counsel took the position that we as defendants were not even entitled to deny the allegations of the injunction petition which had been brought against us.

Senator NEELY. That is Robert Denham you are talking about?

Mr. VAN ARKEL. His agent.

Senator NEELY. An \$8,000-shower-bath man.

Mr. VAN ARKEL. His name was on the brief.

Now, the second point about these interim injunctions is that there is no appeal from them practically. These injunctions are temporary



until the Labor Board decides the case. Let's assume you are a litigant who has gotten an injunction in a lower court and you are faced with the issue of taking an appeal. Appeals are expensive; you have to print the record; you have to do a lot of work, and they come to a lot of money. If you get your appeal in the appellate court the NLRB may decide that case before the circuit court does.

Senator MORSE. They take time, don't they?

Mr. VAN ARKEL. They take time, many months.

Senator MORSE. The delay is always costly in collective bargaining isn't it?

Mr. VAN ARKEL. And since I think in all but one case the Federal courts have denied stays pending appeal, it means that the union has to comply with the injunction when it issues and if the Labor Board decides the case before the circuit court decides the case, the injunction dissolves, the case becomes moot, and you never get a decision from the circuit court.

Senator MORSE. What is the effect of delay, Mr. Van Arkel, on the leadership of the union frequently as far as the rank and file members are concerned?

Mr. VAN ARKEL. Well, I think, Senator, that every labor organization that is under an injunction feels it is, of course, under the most rigid mandate to see that every member of the union complies with the injunction because it is so easy if some member of the union organization, some local, gets out of line, to say that the international officers either have instigated that or that they have failed to stop it or they didn't take some timely action, and therefore they are in contempt of the injunction.

Senator MORSE. Has it been labor's experience that it is easier to stir up dissident groups within a union when it takes a long time to get a case settled than when you can have a very quick settlement of a case?

Mr. VAN ARKEL. Certainly, as I am sure you are aware, Senator Morse, the effect of an injunction is to inflame emotion, to cause a lot of resentment among union members, to make the settlement of the basic controversy more difficult.

I can certainly conceive of cases, and from the work I did with the La Follette committee, I know there have been cases where employers have deliberately stirred up dissident factions by the planting of labor spies or industrial detectives or something of the sort to take action which would embarrass officers of the union.

Senator MORSE. Has labor recognized it as common employer strategy to take legalistic steps to permit delay when they seek to weaken and break a union?

Mr. VAN ARKEL. Yes, necessarily that is the first effect of an injunction. It is always directed against some specific conduct.

Senator MORSE. Not only this section of the Taft-Hartley law but other sections that permit of delay in the settlement of cases play right into the hands of those employers that are out to break unions; is that true?

Mr. VAN ARKEL. That is emphatically true.

Senator MORSE. Do you think it is important that this committee give very careful attention to the data that is being brought out in these committee hearings as to effect of the Taft-Hartley law in producing delays in the settlement of labor disputes?

Mr. VAN ARKEL. It is a point that I had hoped to come to a little later in my statement, but I emphatically think that is of the utmost importance in this situation.

Perhaps you noticed in this morning's paper the story of the Klassen and Hodgson decision of the Board.

That case arose in the late summer of 1947, shortly after the Taft-Hartley Act was passed. In January of 1948, the general counsel got an injunction against the union. The injunction was appealed to the circuit court in April or May, the circuit court affirmed the injunction, and the appeal is now pending before the Supreme Court. This morning the Labor Board, 16 or 17 months after the occurrence of these events, and while the union has been under an injunction, issues its decision. The net result, of course, is that the appeal to the Supreme Court is moot. The Supreme Court will never decide the case.

As soon as the Labor Board decides this case, the injunction drops, the appeal from the injunction becomes moot, and there is no effective way of getting a decision from the Supreme Court as to whether it was proper to issue an injunction at any time.

So that I am saying that the effect of this temporary injunctive procedure under the Taft-Hartley Act is effectively to deny any practical appeal to either the circuit courts of appeal or the Supreme Court in the case of issuance of these temporary injunctions; and that, I consider a serious denial of legal rights.

Senator MORSE. Do you know of any case under the Taft-Hartley law in which the court enjoined the employer from continuing with labor conditions and labor practices to which the union was objecting? Has any injunction issued under the Taft-Hartley law that required an employer to pay a wage which the employer was objecting to paying and over which a strike was ensuing?

Mr. VAN ARKEL. I am confident there is no such case.

Senator MORSE. The only injunctions you know about under the Taft-Hartley law in this field of collective bargaining are injunctions which have the effect of saying to the workers, "You shall continue to work for the employer under such terms and conditions as the employer imposes"; is that not true?

Mr. VAN ARKEL. Precisely, Senator.

Senator MORSE. Is that your conception of a two-way street?

Mr. VAN ARKEL. Not the way I was brought up, Senator.

Senator HILL. Before you leave this provision, isn't the effect of this provision to make a court of law, a Federal court, merely an agent of this general counsel?

Mr. VAN ARKEL. Well, I think that is completely true, Senator. If I may cite a personal experience in this injunction against the International Typographical Union, the findings of the court were, with two trivial exceptions, the findings which were presented by the general counsel.

The injunction which was issued was in the form which had been drafted by the general counsel, again with a couple of trivial exceptions. I think the Senator is completely correct in that view.

Senator HILL. Under that language the court couldn't have taken any other course really, as I see it. The court has to act under this language simply if the general counsel or his regional attorney, who is the agent of the general counsel, they are all one and the same, has

reasonable cause to believe such charge is true. There is no discretion given to the court, there is no latitude there, as I see it; there is no field there for the operation of a court's judgment in the matter. Is that correct?

MR. VAN ARKEL. Senator, I can't agree 100 percent because there have been a few cases in which courts have denied injunctions when sought by the general counsel, but what I am saying is that an enormous advantage is given the general counsel in seeking these injunctions for the very reasons that you suggest, Senator; an advantage which to me is almost overwhelming.

SENATOR HILL. The only time is in a situation where you have a strong judge, steeped deep in the traditions of the judiciary, with great respect and loyalty for the judiciary, and the standings of the judiciary, that you will have a judge who will not just go along and act as a mere agent of the general counsel; isn't that true?

MR. VAN ARKEL. I think that is generally true and, further than that, the judiciary. I think—and I take it properly—has a respect for a Federal agency which comes into court and asks for relief, which it does not have for the normal private citizen coming before it as a private litigant, which I think gives an additional advantage in this type of litigation.

These imponderables are hard to measure, but that they exist I know. They are reflected in the decisions of the cases which have been tried before the courts.

SENATOR HILL. We hear so much today, as the witness knows, about the concentration of power in Washington, more particularly the concentration of power in the hands of some heads of some bureaus or some agencies in the Federal Government.

Could there be a more perfect illustration of the concentration of that power, even to the extent where that power overrides the judicial processes of your courts?

MR. VAN ARKEL. Frankly, Senator, if I were a businessman, as I am not, I should be very concerned about the concentration of power over my business which is represented by the power to issue unfair labor practice complaints and the power to seek injunctions in aid of them.

This hits not only labor unions, but under a different type of administration there might be an extremely serious problem for American businessmen. And I think there is a serious question whether or not this constitutes in any respect an exercise of the judicial power of the Federal courts. The decision is made not by the court but by the National Labor Relations Board and the general counsel has so argued.

In the cases we have had we have, therefore, argued that this is in no proper respect an exercise of the judicial power at all, because they are merely deciding a temporary matter on a probability, the ultimate resolution of which is left to an administrative agency.

In any event, I agree, Senator, it has all of the evils you have mentioned and many others besides.

SENATOR MORSE. Will the Senator from Alabama yield for a question or two on his time?

SENATOR HILL. On my time? If you make it brief.

SENATOR MORSE. I will make it brief.



Senator HILL. The Senator from Oregon always asks such pertinent questions, so I will yield.

Senator MORSE. I hesitate to use the time of this side of the table in order to ask these questions because the questions are not in line with most of those that come from this side of the table.

Mr. Van Arkel, you have heard Senator Humphrey several times ask questions in regard to the effect of these long delays created by 18-month to 2-year injunctions, have you not?

Mr. VAN ARKEL. Oh, yes; I have.

Senator MORSE. My attention has just been called to a paragraph in the NAM News for February 18, 1949, in regard to a court decision in *N. L. R. B. v. Norfolk Shipbuilding Corporation*. I want your comment on what you think is the significance of the decision. This reads:

NLRB delay of more than 2 years in applying for enforcement of cease-and-desist order may be grounds for denial of enforcement, according to United States court of appeals, except that in the instant case the order is still appropriate and no substantial harm to employer has resulted from delay in enforcement.

I call your attention to the principle which apparently is involved in the decision—I haven't read the decision, this is all I know about it, namely, that—

NLRB delay of more than 2 years in applying for enforcement of cease-and-desist order may be grounds for denial of enforcement, according to United States court of appeals.

That is a pretty serious principle, isn't it, in regard to this matter of delay?

Mr. VAN ARKEL. I understand it to be the normal rule of law that laches do not run against the Government, but in an appropriate case the Federal courts have taken the position that if the controversy was too long drawn out, and no effective purpose served by enforcement, they would discharge the case.

Senator MORSE. It stresses the importance of the speedy handling of labor cases and avoidance of the 18 months to 2 years' delay.

Mr. VAN ARKEL. I couldn't agree more. I hear a great deal of concern expressed about the position an employer is placed in by, let us say, a jurisdictional dispute of some kind. I have heard very little concern expressed about the situation in which workers are placed who are discharged for union activities.

Senator MORSE. If this principle is carried out, we may find ourselves in the situation where if an employer can get the delay long enough, he may escape entirely the enforcement of a cease and desist order.

Mr. VAN ARKEL. I think that is entirely clear, Senator, but what I would like to emphasize—and this I say out of my experience with the Wagner Act—that it is a terribly serious thing for workers who have been discharged and who have no means of livelihood and no way of maintaining themselves to take the delay of 3, 4, or 5 years, which has now become almost standard, before they can get any effective relief.

I think it is a mistake to short-cut that and to say that the need for speed means we have to go into an injunction process because I feel that evil is worse than the cure that it effects. I do think, however, that from my observation—and, obviously, I cannot document

this—that the issuance of these injunctions has had the actual effect of delaying the NLRB in its handling of cases because once the injunction issues, the prime controversy is disposed of.

The union has to live with the injunction and the employer may have strong incentives to delay Labor Board action after that point in order to keep the injunction in effect.

Now, whether that has happened or not I can't say, but I do know that Government agencies, like other people, respond to pressure on them, and if the heat is off, they are apt to take their time, and I think it is far better to say, "We will let these things go through the Labor Board," so that the parties concentrate on getting the Labor Board to act quickly, rather than short-cutting the procedure by saying, "We will go to court and get an injunction," even if in a particular case it means that a worker has got to wait still longer for relief or even if, as provided in the Thomas bill, an employer who seeks to have a jurisdictional dispute settled may have to wait for some time before the Labor Board can act on the matter.

Now, I would like to turn, Senator Morse, to the question raised by the matter that you read into the record this morning. I would like to suggest that you have a look at appendix A of my statement, which is a summary, a very brief summary, of the union rules which the general counsel of the Labor Board has claimed were illegal in the ITU-American Newspaper Publishers Association case.

I note that in a letter you read, Senator Morse, it stated that the rules which were attacked did not in any way relate to the internal laws of the union. Look at article III, section 2, that contracts must be in accord with ITU laws and approved by the ITU president, or article III, section 4, that contract proposals are to be submitted for approval of ITU president before they are the subject of negotiation.

Now, I submit, that that is an internal union affair. The first one, article I, section 8, states the oath which apprentices are required to take on becoming apprentice members of the union. I can conceive of little that could be more an internal affair of a union than the form of the oath which people take on becoming members. And so on down the list.

Senator HILL. Was there the claim that the oath was unlawful?

Mr. VAN ARKEL. This list of 30, and perhaps you will find something in these rules that shocks you, but to me they seem like the normal rules any civilized union would adopt to regulate its affairs, and yet, as I say, this list of 30 has been claimed to be illegal by the general counsel.

Senator HILL. Excuse me 1 minute. Is there more or less a form for that oath? Just what do they do, swear allegiance to the union?

Mr. VAN ARKEL. That is correct. I can read it to you if you would like me to take the time.

Senator HILL. That is all right.

Mr. VAN ARKEL. On the third page of this I have summarized or I have set forth the two trial examiner-recommended orders, the first one of Trial Examiners Meyers. The Senators will note that it directs the ITU to cease and desist from—

In any manner promulgating, disseminating, pursuing, observing, or in any wise giving effect to or ordering, instructing, requiring, recommending, inducing, encouraging, or in any wise causing any of the subordinate unions and their members or any of them to promulgate, disseminate, pursue, observe, or in any

wise give effect to, any policy, practices, or course of conduct, including without limitation laws, rules, and decisions of the International Typographical Union.

Trial Examiner Ringer, in the Baltimore Graphic Arts case, recommends a somewhat similar order. He left it to us as to which of our laws were unlawful, and simply said, "Any laws which were inconsistent with or in conflict with these recommendations, were to be conducted as abrogated."

Now, this question of union laws, I would like to suggest to the Senators, is a very basic question because union members in their experience find that certain practices are harmful to their craft or to themselves or to their union, and they take the normal civilized action of any group of people who are associated in an enterprise of adopting a law about the matter by which the conduct of the members of the organization is to be governed.

I suggest to the Senators that that right should be completely safeguarded, that the union members should be given the right, so long as it does not conflict with some civil law, and by that I mean, I would not, of course, recommend that a union have a law calling on its members to commit violence or something of that kind, but that any law that is consistent with civil law should be recognized as valid, and that the right of the union officers who are elected for the purpose of enforcing those laws, to enforce them, should be equally recognized.

Now, the danger—the reason I would like to emphasize that is because under the duty to bargain collectively imposed by section 8 (b) (3) tied in with the restraint and coercion section in 8 (b) (1) (A), it has been claimed by the general counsel and found by trial examiners of the Labor Board that the adoption of laws by a union, the refusal to negotiate each of those laws out with each employer with whom they contract, their insistence on the observance of those laws, and their enforcement of those laws upon the union members, is a violation of the statute.

That makes impossible the carrying on of normal trade-union activities. It effectively puts into the statute the Ball anti-industry-wide bargaining amendment which was defeated in the Senate when the Taft-Hartley Act was being debated, because it, in effect, requires each local to bargain for itself with no kind of direction or supervision from the international union, and requires each local union to bargain away on demand of employers the standards which the union has tried to fix to be uniform throughout the country.

Now, it is a necessary objective of a trade-union to try and establish these uniform standards because employers are in competition, and any union which gives an employer a good deal, has to give every other employer the same deal; and the effect of the interpretations which have been proposed thus far of these sections would be to make impossible the attainment and the maintenance of uniform standards by a union throughout the country.

I would like to turn then, if I may, briefly to the question of separation of functions. In addition to the objections which have been voiced here this morning on the question of separation of functions, there are certain additional matters I would like to mention.

The first is that under any civilized legal procedure of which I know, a litigant has a means of testing the sufficiency of the pleadings on which he is required to go to trial.



Under the Taft-Hartley Act that right is effectively denied. The general counsel can state in a complaint anything he wants to.

In the ITU cases we claimed that certain very important allegations in the complaint against us did not state a cause of action under the Taft-Hartley law. The trial examiner of the Labor Board agreed with us and struck that out, that allegation out.

The general counsel thereupon appealed to the Labor Board. We asked for an opportunity to file briefs and to argue the matter. Without giving us an opportunity to file briefs or argue the matter, the Labor Board summarily reinstated that section in the complaint, and we were forced to go to trial on the matter, a trial which lasted about 6 months, and which was extremely expensive, largely centering around this one allegation.

Somewhat later, in the National Maritime Union case, the Labor Board adopted the position which we had argued for, and which the trial examiner has sustained. So, the upshot of the matter was that over a period of some 6 months we were taking testimony on an issue which, had we been able to argue it before the Board, would have been immediately rejected, we feel, by the Board, since they later did reject it.

Senator HILL. But the Board held that under the statute they could not sustain the decision of the trial examiner, is that right? They could not strike that?

Mr. VAN ARKEL. They gave us no opinion of any kind, Senator. They simply issued a telegraphic order a few days later stating that the appeal of the general counsel was granted, that our cross appeal was denied, that the allegation was reinstated in the complaint, and that we should go to trial on it.

Now, that is an interlocutory matter which we could not appeal to the court. We had to abide the ruling of the Board. I think they could have given us a hearing on it.

But I point out that in practice it has not been done, and the same thing has happened to other unions in other cases, so that there is no way in which you can challenge the sufficiency of the pleadings.

Senator HILL. Were you given the opportunity or did you have the right before the Board to argue the matter as to whether or not that allegation should be stricken from the complaint?

Mr. VAN ARKEL. No; we asked for the opportunity, Senator, and were denied.

Senator HILL. You were denied that opportunity?

Mr. VAN ARKEL. That is correct.

Senator HILL. In other words, you were put on trial then on pleadings which, after all the hearing and all the testimony was taken, after the trial was to all intents and purposes concluded, then those pleadings were stricken from the record.

Mr. VAN ARKEL. Well, the Board has not decided this case.

Senator HILL. How is that?

Mr. VAN ARKEL. They have not yet decided this case, but in a companion case this particular legal issue was decided favorably to the contention which we had made.

Further than that, I think it has had the effect of inducing the Board to throw into the office of the general counsel many powers which either did not have to be thrown in, or which in some cases, I think, the Congress intended the Board should exercise.

For example, Senator Morse has called attention to the delegation of the entire power to seek injunctions, even discretionary injunctions, although the statute says the Board shall have power to seek injunctions.

Similarly, the whole question of administration, of personnel and the rest, has been thrown to the general counsel, so that from my own observation it appears to me that the Labor Board sits at the end of an assembly line, as Chairman Herzog called it, which takes an average of 520 days, but during that entire period all matters are under the control of the general counsel. So that, in fact, you do not have a division of functions, but you have the general counsel, who, for all practical purposes, is in a far superior position than the Board, and who makes the real operating decisions which vitally affect litigants before the Board.

I would like to suggest to the Senators that some months ago I was given an opportunity to see a first study of the Hoover Commission on the functioning of the National Labor Relations Board. It was shown to some persons practicing before the Board.

That contains a very excellent discussion, I think, of this whole separation of functions' problems, and I would like to recommend it to the Senators' attention because it points out the importance in labor matters of having these matters decided by a group of people rather than by a single individual.

The reconciliation of conflicting and differing points of view is much more apt to produce a balanced and rational judgment than can the individual judgment of any person, no matter how able he may be.

Senator MORSE. Will the Senator from Alabama yield for a question?

Senator HILL. Yes, I will yield.

Senator MORSE. Mr. Van Arkel, you were general counsel for the National Labor Relations Board under the Wagner Act, were you not?

Mr. VAN ARKEL. Yes, sir.

Senator MORSE. And while you were still general counsel did not the Board work out rules and regulations for the division of authority within the Board under administrative regulations in accordance with the Administrative Procedure Act of 1946?

Mr. VAN ARKEL. Well, I think it was done long before that, Senator. From the earliest days of the act, in fact within a month or two after its passage, a completely separate section of trial examiners was set up. They were completely insulated from the prosecutors, the attorneys who were handling cases in the field, or those who had any connection with the prosecution of cases, and they were sent out to sit on cases, and no one knew beforehand who would sit on a particular case.

After the trial examiner had heard the evidence, as any referee or master or judge would hear it, he made his report and that then went to the Review Section, which was kept equally carefully insulated from the prosecuting arm of the Board.

There could not be much opportunity for contact because the prosecuting officials, of course, were around the country in the regional offices, and the Review Section attorneys were in Washington.

So that, I think there was, both before and after the Administrative Procedure Act, an effective separation of functions of the kind to

which litigants are entitled to who have matters coming before Federal agencies.

Senator MORSE. Was the procedure of the National Labor Relations Board in respect to that division of authority to which you have just testified consonant with similar procedures that were followed by other administrative tribunals in the Government?

Mr. VAN ARKEL. Well, Senator, I think they were better than most other tribunals. They were the subject of considerable praise in the Attorney General's report, the so-called Acheson report, which Walter Gellhorn was largely responsible for, and they formed the model for much of the Administrative Procedure Act itself.

Senator MORSE. In being pretty much the model for the Administrative Procedure Act on this particular point, do you know of any reason, therefore, as to why the National Labor Relations Board should have been made the one exception to the Administrative Procedure Act in 1946?

Mr. VAN ARKEL. Oh, I can think of lots of reasons, Senator.

Senator MORSE. Any good ones?

Mr. VAN ARKEL. No. [Laughter.]

Senator HILL. I think you have seen evidences of a good many of the reasons why separation was made.

Senator MURRAY. Mr. Van Arkel, I assume that you will require considerably more time to finish your statement.

Mr. VAN ARKEL. Just a moment. Would you like to recess or something?

Senator MURRAY. I was just saying that you have other very important matters to discuss.

Mr. VAN ARKEL. No; I just have one further point to discuss.

Senator HILL. Before you touch on that, in appendix A, I notice article III, section No. 2, "Contracts must be in accord with ITU laws and approved by the ITU president."

Is there anything unusual or exceptional about that provision so far as your ITU regulations are concerned?

Mr. VAN ARKEL. Well, I think it is an extremely salutary provision, Senator, because that is the method by which the union members make certain that the laws which they adopt are enforced. It is the duty of the president of the union to look over those agreements and make certain that the laws of the union are not otherwise violated.

Unless there was such power, the laws of the union would not be enforced, so that I think it is not only usual but a highly salutary provision, and what I would like to emphasize is that it seems to me it is peculiarly an internal affair of the union.

Senator HILL. Well, is that not salutary to the employer as well as to the employees?

Mr. VAN ARKEL. Employers are very anxious to have that approval, Senator, because in practice it has this effect: It means that the international union puts its sanction upon that contract. That means that they will not tolerate a strike in violation of that agreement; it means that they will assist an employer if there is a violation of it, and it means that union members are equally anxious to have that approval because only with an approved contract can they obtain benefits in the event they strike. So that from both the employer's and union's viewpoint it is useful, and it goes to the essential that I



was talking of, Senator, that the union's objective is to get uniform standards in order that there will not be competition between employers on wage rates and other conditions of work. This is the means by which the union assures a uniformity which will mean fair competition among employers and not a competition based on substandard working conditions.

Senator HILL. And nothing contributes more to industrial unrest, to strikes, than this thing of these substandard wages; isn't that true?

Mr. VAN ARKEL. I think so, Senator, and obviously a union cannot succeed in raising the living standards of its members if somebody is holding them down over here.

If the employer who is paying sweatshop wages can continue to do it, he is going to take the market away from the fair employer, so a union necessarily is going to strive to get this kind of uniform structure.

Senator NEELY. Isn't the principal involved in the question just asked by the Senator identical with that involved in the making of laws by the Congress, which must go to the President for his approval?

Mr. VAN ARKEL. Well, I think so, Senator. I think it is even more important than that. Every organization that has ever existed has its laws; a church has its laws; a lodge has laws. Any time that men organize themselves into a group, civilized people, they adopt laws to govern themselves, and these laws of the unions are quite as important to them as the laws of a social club or of a church group or of a political organization or other groups, and I think they are entitled to the same respect and the same lack of interference.

Now, the one subject I wanted to touch on, in addition to those I have mentioned, Senator Murray, was the question of the rules of agency.

Section 6 of the Norris-LaGuardia Act—I am sure the Senators are aware—was one of the most important advances in the law achieved by that act. Under that section, a union could be held responsible only for the acts of its authorized agents or for acts which were ratified after full knowledge of the facts.

Now section 2 (13) of the Taft-Hartley Act repealed section 6 of the Norris-LaGuardia Act. I recall that Senator Morse and Senator Murray and Senator Pepper and others predicted what the effect of that would be, and the effect has come about.

The NLRB in one case, the Sunset Line & Twine Co. case, said that a union may be responsible even though it has, and I quote from the opinion, "specifically forbidden the act in question."

It has held international unions responsible for the acts of almost anybody, because of the critical fact that the international union had called a strike. Now, this means then, and is gradually being extended to mean, that not only is a union responsible for the acts of all of its members, but it opens up the very definite possibility that the union may be responsible for the acts of entire strangers who may participate on a picket line, who may merely be in the vicinity.

It certainly opens up the possibility that the union will be held responsible for the acts of an agent provocateur who is introduced in the union ranks by the employer, labor detectives, and the rest.

Senator MORSE. Will the Senator from Alabama yield for a question?

Senator HILL. Yes. I have not the time; the chairman has, but I will be glad to yield to the Senator.

Senator MURRAY. I have no objection. You may ask any questions you desire to ask.

Senator MORSE. Mr. Van Arkel, this rule of agency that you point to in this part of your prepared statement is not a rule that applies to corporations, is it?

Mr. VAN ARKEL. Well, emphatically not, Senator; I think not, Senator. I think the rules of agency developed for corporations are very narrow. The only case I can think of where a corporation might be held responsible for an act that it had not specifically authorized or ratified would be in the case of an apparent agency.

Senator MORSE. The general rule of agency is, is it not, that when the corporation, for example, specifically forbids the taking of a certain course of action, that it is usually found that, therefore, that action was not within the scope of agency?

Mr. VAN ARKEL. Emphatically. I think that is true, Senator.

Senator MORSE. And what you are pointing out here is what some of us pointed out during the debate on the Taft-Hartley law before the vote was ever taken, that what it does is set up one rule of agency for trade-unions more harsh than the rule of agency applied to the officers of corporations; is that not true?

Mr. VAN ARKEL. I think that is right, Senator.

Senator MORSE. Therefore, here is another point that answers the proponents of the Taft-Hartley law who have alleged all over this country that the act does not discriminate against unions. Is that not a complete answer to this particular point on that argument?

Mr. VAN ARKEL. I could not agree more strongly, Senator.

Senator MORSE. And that the difficulty really is that it is so hard to get the man in the street to understand the importance of the differences in the legal rights granted to employers and to unions? Is that not true?

Mr. VAN ARKEL. I think so, Senator; and the problem is even worse than that, I think, because of what I said at the outset, that we are not dealing with these sections in isolation. You have to tie together the new rule on agency, the rule of 8 (b) (1) (A), the rule of 8 (b) (4) (A), the section 10 (1) on injunctions, and then you come out with a monstrosity that you would not have believed possible even on the worst reading of the act.

Senator MORSE. The result being that the total legal pattern of the act is to impose restrictions upon unions not imposed upon employers.

Mr. VAN ARKEL. Yes, indeed, and the use of an extraordinary legal ingenuity by employer lawyers and by some agents of the Government designed to put the worst possible construction on a combination of provisions, each of which in itself is bad, but when you add them all together you get an impossibility, an impossible result.

Senator MORSE. I want to commend you for this entire statement, Mr. Van Arkel. I have scanned through it and I think you have made a great contribution to these hearings in your endeavor to point out to the American people the basic weakness of the Taft-Hartley Act. I have tried to emphasize in many of my speeches prior to its passage and since its passage, that the basic product of the act is to set up a whole labyrinth of common law court legal procedures devised to

create great delays and harassment and embarrassment to unions, with the resulting product of weakening their collective bargaining strength.

It is a legalistic weapon that has been placed in the hands of employers to harass unions, stall collective bargaining, weaken their bargaining strength, bankrupt their treasuries, and give the employers a preferred position in legal actions in the courts against the workers. It is basically unfair, in my judgment, and you cannot reconcile it with just common justice.

We must get rid of these discriminatory legalistic advantages given by the law to employers. That is why I made the point yesterday in my press release that I can understand why certain great employer associations in this country, such as the NAM and the United States Chamber of Commerce, want to maintain this unfair advantage over the workers.

But the American public does not want it, and the great majority of American employers do not want it. What they want is a balanced act that imposes the same procedural rights upon unions as upon employers, no more and no less; giving neither the unions nor the employers an unfair procedural advantage before the courts of this country, one over the other.

Mr. VAN ARKEL. I agree, Senator.

Senator NEELY. I hope that the newspapers will publish in full the statement which Senator Morse just made, and also the testimony of this witness, and feature it as they would feature the testimony, a representative of the association.

Senator MORSE. I thank the Senator from Alabama for his time, and the Senator from West Virginia for his kind remarks.

Senator HILL. Does the Senator desire any further time?

Senator MORSE. Not at the present time, but I will later. [Laughter.]

Mr. VAN ARKEL. I would like to make, if I may, Senator, a couple of observations on what you said.

Suppose that a law were proposed in the Congress which would give a union a right to require the employer to buy only union-made goods. I suppose that that law would not get beyond a single Senator. Yet, that is exactly the effect of the Taft-Hartley law in reverse. The Taft-Hartley law says that union men must work on struck goods or non-union goods, and the corollary of that—at the request of their employer, of course, is that the employer has a legal protection in requiring his employees to work on that type of goods. The corollary of that would be a law which would say to a union: "You will have the support of Federal injunctive relief and damage suits and unfair labor practice proceedings in requiring your employer to buy only union-made goods."

Now, that, I think, is an illustration of the unfairness that you were pointing to, and as for the legalism that you were pointing to, Senator, I would like to take the liberty of reading a footnote from the decision of the Labor Board in the Klassen & Hodgson case of this morning, just to indicate the legalism there in this act.

I am reading from page 11, footnote 39:

Our dissenting colleagues apparently do not believe that section 8 (b) (1) (A) would be substantially duplicated if section 8 (c) were read into section 8 (b) (4) (A) because temporary injunctive relief under section 10 (1) was not



available against Section 8 (b) (1) (A) conduct as it is against section 8 (b) (4) (A) conduct, and because no civil suit by an injured party could be brought under section 303 of title III for damage sustained as a consequences of acts described as unlawful which also constitute unfair labor practices under section 8 (b) (4) (A). Apart from the fact that section 8 (b) (1) (A) conduct is also subject to temporary injunctive restraint under section 10 (j), it seems unreasonable to assume that Congress would enact a substantive provision, such as section 8 (b) (4) (A), in order to reach certain conduct for the purpose of temporary injunctive relief under section 10 (1). With respect to civil suits for damages under section 303, that right is available not by virtue of section 8 (b) (4) (A), but because such conduct is specifically made unlawful for the purpose of civil suit by section 303.

Now, explain that to a worker. [Laughter.] Explain that to a man working in the plant.

Senator MORSE. Explain it to the Board. [Laughter.]

Mr. VAN ARKEL. I cannot understand it, but the question here is whether or not a man has a right to carry a truthful banner peaceably in a public place, and I think it is a stench in the nostrils of American workers that that simple question has to be decided by this kind of drivel.

Senator MORSE. Your statement is very mild. [Laughter.]

Senator HILL. Let me ask this question: Had the Supreme Court in a number of decisions decided that peaceful picketing is no more, no less than the expression of the right of free speech?

Mr. VAN ARKEL. Well, that is interestingly taken care of, Senator. I had the naive idea that the Constitution applied not only to the courts and the Congress, but to Federal agencies as well. But they point out here that they cannot be bothered—I am sorry, I shall have to look for it later.

Senator HILL. You refer to Mr. Herzog's opinion?

Mr. VAN ARKEL. No, I am referring to the majority opinion in which they state "nor is it within our province to pass upon the constitutionality of the act," citing as a footnote another case decided by the Labor Board, so that by the simple device of simply saying, "This constitutional question is not for us," they evade the whole question as to whether or not this particular picketing is or is not constitutionally protected, and then they go on to say that the right of free speech does not apply to picketing in secondary-boycott cases.

Senator Pepper the other day was questioning Mr. Denham and was trying to develop the idea that section 8 (c) was only a protection for employers. I thought he was wrong, and now I ought to apologize to him because the Board has now held that section 8 (c) applies only to employers, but does not apply to unions.

In short, employers have the right of free speech to the point of harassing a union, of intimidating workers by all kinds of speeches to the point where the winning of an election becomes almost impossible. But there is no right of free speech, and section 8 (c), they specifically decide, does not apply to union activity, which is in connection with the secondary boycott.

Now, Senator, I suggest that is another inequality that the Congress would do well to take care of.

Senator HILL. And the inequality does not appear on the face of the act.

Mr. VAN ARKEL. That is right.

Senator HILL. In other words, as we know, when this bill was under consideration by the committee and under consideration in the

House, declarations for the right of free speech echoed around these halls, through these corridors, free speech for everybody, free speech for the employer and, of course, free speech for the employee, and it would have been very vociferously denied if anyone had charged that the right of free speech was being denied to the employees; and yet that is exactly what we have now.

Mr. VAN ARKEL. Precisely, Senator.

Senator HILL. Where you have one section that, on the face of it, would seem to accord the right of free speech to both employer and employee, another section comes along and denies that right to the employee. Is not that true?

Mr. VAN ARKEL. I think that is emphatically true.

Senator MORSE. Will the Senator from Montana yield for a question on this matter?

Senator MURRAY. Yes. This is on your time.

Senator MORSE. I asked you to yield, and it is always on your time. [Laughter.]

Senator HILL. I do not know how the Senator is going to follow through, but I think it might be interesting to put into the record at this point the conclusion of Mr. Herzog's concurring opinion in this matter.

He says:

There is, to be sure, a serious constitutional question raised under the first amendment. However grave my personal doubts on this score, based upon recent free-speech decisions of the Supreme Court, the fact remains that there are other opinions, equally current, holding that peaceful picketing may be enjoined if its purpose has been declared unlawful by statute. In such an uncertain state of the law, duty requires administrators to assume the validity of an intent-effectuating construction of the act that gave them being. The courts, and not this Board, must decide what is constitutional, as Congress, and not this Board, must determine what is wise.

Senator MORSE. On your time, I say to the Senator from Montana, I was going to follow through on that very point. May I say to the Senator from Alabama, I would make the comment that I am at a complete loss to follow Mr. Herzog's logic, if there is any logic in his position. I cannot discover it because when he expressed himself in the first part of that statement as having grave doubts as to the constitutionality of the particular point that he is discussing in the decision, he ought to put a period.

Senator HILL. Right there.

Senator MORSE. Because that is where the case should have ended, in my judgment.

But then when he goes on and says that because there may be some statutes that seek to make illegal a course of action about which he himself confesses he has grave doubts as to the constitutionality, it is almost impossible for me to follow his logic.

I read the Washington Post report on this case, which involves a pretty basic issue. We must not let it rest with the National Labor Relations Board because we are dealing here now, in my judgment, with an application of the free-speech guarantee of the Constitution. It is time to find out whether or not an administrative board or a court can place any restriction of this sort on a constitutional guarantee. If our courts attempt to restrict free speech in that particular, then the people had better rise up and clarify the meaning of the free-speech

guarantee in the Constitution, as intended by the founding fathers who wrote that great guarantee into the Constitution.

Now, this matter—

Senator HILL. Let me ask the Senator this question.

Senator MORSE. With regard to free speech cannot be dealt with lightly in America with world changes going on as they are. We cannot deal lightly with it whether it is transgressed by legislatures or administrative tribunals or courts. When we, as a free people, start losing our freedom of speech we have really lost our freedom.

Senator HILL. You have lost your right of petition, is not that true?

Senator MORSE. Why, of course you have. But listen to this, may I say to the Senator from Alabama. This is interesting:

Involved in this case—

it is the Hodgson case—

are two contradictory provisions of the Taft-Hartley Act. The law contains a free-speech clause which states that no coercive expression of "any views, arguments or opinion," or their dissemination, is not an unfair labor practice "under any of the provisions of the act."

The law also contains a secondary boycott clause which forbids a union to "induce or encourage" employees to withhold their labor from one employer to bring pressure upon another employer.

Now, let us see if it does, Mr. Van Arkel. I direct your attention to section 8 (b) (4) of the Taft-Hartley Act which reads:

To engage in or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing—

that is the word—

or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

Now, my question is directed to the words "forcing or requiring." They do not say "persuading," they do not say that he shall not freely walk down the street carrying a sandwich sign stating facts about a business. But it specifically used the words "forcing or requiring."

Is there any force or physical act of "requiring" involved in the act of carrying a sign in front of a business stating a fact about that business?

Mr. VAN ARKEL. Well, Senator, I am a bad one to ask about interpretations of the Taft-Hartley Act because I am not very sympathetic with it, and I would rather leave its interpretation with those who believe in its purposes.

Senator MORSE. I think we will get greater truth from somebody who is not sympathetic with it than from someone who is.

Mr. VAN ARKEL. The majority relied on the words "inducing or encouraging," and I agree that I emphatically would have reached a different result in this case, but as I say, I am not in sympathy with the purposes of the act.

I would like to point out that this case goes much further, however, Senator, than merely the question of peaceful picketing, because they also held that a we-do-not-patronize list is illegal, so that the request



of a union addressed to the public not to patronize a certain employer is now held to be unlawful and not protected as free speech.

(At the request of Senator Hill, the National Labor Relations Board press release of Tuesday, February 22, 1949, was inserted at this point, as follows:)

**NLRB RULES PEACEFUL PICKETING AND DO-NOT-PATRONIZE LIST VIOLATE TAFT-HARTLEY ACT WHEN USED TO FURTHER SECONDARY BOYCOTT**

(National Labor Relations Board, Washington, D. C.)

The National Labor Relations Board today issued its first ruling involving two inconsistent provisions of the Labor-Management Relations Act: (1) the so-called free-speech clause (sec. 8 (c)) which states that uncoercive expression of any views, arguments, or opinion, or their dissemination is not an unfair-labor practice under any of the provisions of the act; and (2) the secondary boycott clause (sec. 8 (b) (4) (A)) which forbids a union to induce or encourage employees to withhold their labor from one employer to bring pressure upon another firm.

A majority of the Board found that the secondary-boycott provision prohibits a union's peaceful picketing and we-do-not-patronize list when they are used in furtherance of an illegal secondary boycott. Members James J. Reynolds, Jr., and J. Copeland Gray signed the principal majority opinion. Chairman Paul M. Herzog wrote a special concurring opinion, reluctantly reaching the same result.

A minority of the Board—consisting of members John M. Houston and Abe Murdock—dissenting, held that the free-speech provision gives immunity to the union's peaceful picketing and we-do-not-patronize list.

The case, which led to the writing of three opinions by the Board members, was thus characterized by Chairman Herzog in his separate concurrence "It poses the most important and most difficult problem that the Board had encountered under the Labor-Management Relations Act of 1947. The opinions of my colleagues disclose how reasonably the most reasonable of men can differ in seeking to solve the dilemma created by the conflict between section 8 (c) and 8 (b) (4) (A) of the statute that all are sworn to enforce as written. The writing was not ours; the dilemma was not of this Board's making. \* \* \* In deciding individual cases the Board's duty is not to seek to discover, as legislators would, the better or the worse answer. It is to enounce, as judges must, that answer which will most probably effectuate the intention of the Congress which wrote the words that we must rightly read."

The case arose from charges brought jointly by the Wadsworth Building Co., Inc., manufacturers of prefabricated houses, and Klassen & Hodgson, Inc., an erector of the houses. Both firms are located at Overland Park, Kans., a suburb of Kansas City, Mo. The charges were made against the carpenters' district council of Kansas City and its business agent, Walter A. Said.

The facts of the case, as set forth by the Board, were these: The carpenters' council began the picketing of the Klassen construction project on October 14, 1947. The peaceful picketing had the effect of inducing the employees of Klassen's suppliers to withhold delivery of materials to Klassen's project. An object of the picketing was to force Klassen to stop doing business with Wadsworth, who did not employ union carpenters.

The Office of the General Counsel, in the hearing before trial examiner, Charles W. Schneider, urged that the picketing itself was inherently coercive, and therefore illegal. The trial examiner, in his findings issued on May 3, 1948, found that the picketing was coercive as to members of the same union, but not as to others, because of the union's disciplinary powers over its own members. The theories of both the general counsel and the trial examiner were rejected by each of the Board's three opinions.

All three opinions referred at length to the 1947 legislative history of the two "conflicting" provisions of the statute.

The principal majority opinion, signed by members Reynolds and Gray, stated: "The carpenters urge that their activities were economically justified and necessary to protect the carpenters' wage scale in the territory which was being threatened by Klassen's use of Wadsworth houses. Therefore, the carpenters' argument continues, Klassen, who was thus benefiting from Wadsworth's employment of cheaper nonunion labor in the form of lower prices, was not an unconcerned or neutral party to the dispute when Congress *purposed* to shelter from economic pressure. However, both the express language of section 8 (b) (4) (A)

and its legislative history disclose a contrary intention. In fact not only does it appear from the legislative debates and committee reports that Congress considered the product boycott one of the precise evils which that provision was designed to curb, but Senator Taft, one of the sponsors of the act, and Senator Ball, in reply to the critics of the section in question, emphasized without qualification that all boycotts were equally indefensible and unjustified. In these circumstances, Klassen, who was only a customer of Wadsworth, was an unconcerned or neutral party intended to be protected from economic pressure exerted by the carpenters in aid of its primary dispute with Wadsworth.

"If, as the carpenters urge, it is desirable that product boycotts should be exempted from the interdiction of section 8 (b) (4) (A), the argument should be addressed to Congress. Manifestly, the Board, as the administrative agency entrusted with the enforcement of the act, cannot assess the wisdom of, or rewrite or engraft exceptions upon, legislation which represents the considered judgment of Congress on a matter of serious and controversial public policy. Nor is it within our province to pass upon the constitutionality of the act. \* \* \*

After citing the various statements made in the two Houses of Congress by both the proponents and opponents of the statute, the Reynolds-Gray opinion continued:

"Thus, although there was strong opposition to section 8 (b) (4) (A) there was no disagreement as to its sweeping implications and meaning; it was intended to prohibit peaceful picketing, as well as persuasion and encouragement, to further a secondary boycott. Moreover, it can hardly be supposed that Congress, in enacting section 8 (b) (4) (A) as the legislative response to the asserted evils of secondary boycotts, did not envisage the whole gamut of union activities by which such boycotts are achieved. Obviously, picketing, though peaceful, as one of the most effective forms of economic pressure, must have been within the contemplation of Congress as one of the practices to be curbed by that provision. \* \* \*

"The fact that section 8 (b) (4) (A) also makes it an unfair labor practice for a labor organization to engage in a strike for a proscribed purpose, only serves to emphasize that which is already abundantly clear, that Congress likewise intended to prohibit peaceful picketing. There can be little doubt that Congress in thus banning a secondary strike intended also to illegalize picketing as such, which customarily accompanies such a strike in order to enlist the support of others to bring economic pressure to bear on an employer. To find that peaceful picketing was not thereby proscribed would be to impute to Congress an incongruous intent to permit, through indirection, the accomplishment of an objective which it forbade to be accomplished directly. \* \* \*

"Section 8 (b) (4) (A) was aimed at eliminating all secondary boycotts and their concomitant activities which Congress thought were unmitigated evils and burdensome to commerce. It was Congress' belief that labor disputes should be confined to the business immediately involved and that unions should be prohibited from extending them to other employers by inducing and encouraging the latter's employees to exert economic pressure in support of their disputes. It was the objective of the unions' secondary activities, as legislative history shows, and not the quality of the means employed to accomplish that objective, which was the dominant factor motivating Congress in enacting that provision. Both the proponents and opponents of the act so interpreted section 8 (b) (4) (A) and understood that it prohibited peaceful picketing, persuasion, and encouragement, as well as nonpeaceful economic action, in aid of the forbidden objective.

"In these circumstances, to construe section 8 (b) (4) (A) as qualified by section 8 (c) would practically vitiate its underlying purpose and amount to imputing to Congress an unrealistic approach to the problem. For then, in no instance would this section, contrary to congressional intent, reach peaceful picketing, though a familiar means of attaining a secondary boycott, or other peaceful forms of inducement and encouragement. \* \* \*

"From the foregoing discussion of the act and its legislative history, one thing is plain: The task of choosing the plain language of section 8 (b) (4) (A) and the equally plain language of section 8 (c) is not a simple or enviable one. 'Nor can the canons of construction save us from anguish of judgment.' But, because we believe that to apply section 8 (c) to section 8 (b) (4) (A) would lead to absurd or futile results or, at least, to an unreasonable one plainly at variance with the policy of the legislation as a whole, we consider it our duty, as the administrative agency entrusted with the enforcement of the public policy embodied in the act, to \* \* \* effectuate the will of Congress.

"We therefore conclude that section 8 (b) (4) (A) prohibits peaceful picketing, as well as other peaceful means of inducement and encouragement, in furtherance of an object proscribed therein, and that section 8 (c) does not immunize such conduct."

In his special concurring opinion Chairman Herzog stated:

"The means adopted by the union consisted of wholly uncoercive action and expression: A conversation, peaceful picketing with truthful signs, and the circulation of a do-not-patronize list. The means do not shock, and contain no threat of reprisal or promise of benefit. But the end has been declared unlawful in no uncertain terms.

"It seems clear to me that Congress was attempting to deal a death blow to secondary boycotts, whether for economic or for other objectives, and desired to use all the power at its command to eliminate them from the American industrial scene. \* \* \* Picketing and the use of unfair lists have been such traditional methods of implementing secondary boycotts that I find it impossible to believe that Congress was not deliberately aiming its shafts at these practices \* \* \*

"Surely the Eightieth Congress was more interested in putting an end to the secondary boycott than in protecting peaceful picketing and do-not-patronize lists. That being so, I have no choice but to join in the conclusion reached by Mr. Reynolds and Mr. Gray that the carpenters have violated that act as amended in 1947."

In their dissenting opinion Members Houston and Murdock stated:

"Section 8 (c) provides that the 'expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit.' As revised by the majority's interpretation, this section would read '\* \* \* \* under any of the provisions of this act, except section 8 (b) (4) \* \* \*'. Thus, it is clear that the effect of the majority's decision in this case is to insert an exception to the express language in section 8 (c) guaranteeing freedom of expression to all concerned under the act, regardless of any other provision. Such an interpretation, it may be noted, would forbid all manner of peaceful persuasion for an objective proscribed by section 8 (b) (4), including not only peaceful picketing and we-do-not-patronize lists, but advertisements in the newspapers, speeches over the radio, in public halls, and in auditoriums, miles distant from any employer's plant.

"We do not believe that the legislative history of section 8 (b) (4) (A) or the purposes of the amended act, taken as a whole, require this interpretation. On the contrary, the majority's exhaustive analysis of legislative history bearing on congressional intent with regard to section 8 (b) (4) (A) reveals not a single statement by the proponents of the act during the period of its enactment to the effect that the terms "induce or encourage" were intended to include peaceful picketing as such or that section 8 (b) (4) (A) was not covered by section 8 (c). \* \* \*

"The desirability of making peaceful picketing an unfair labor practice was specifically considered in conference and rejected by the framers of the act. It was not by accident that this term was omitted from the carefully chosen language of section 8 (b) (4) (A). \* \* \*

"Thus, in our opinion, the task before the Board, as an administrative agency, is to enforce the prohibition against secondary boycotts \* \* \* up to the barriers imposed by constitutional principles and by Congress itself in section 8 (c). We cannot find, as does the majority, by inference and analogy a clear and manifest intention of Congress to forbid peaceful persuasion under section 8 (b) (4) (A). If such an intention exists, it is at most ambiguous and ill-defined. There is, on the other hand, abundant and unqualified legislative history to support our view that Congress meant exactly what it said when it made section 8 (c) applicable to every provision of the act, without exception. \* \* \*

"As the legislative history shows, it was a matter of paramount concern to Congress, a concern that found expression in section 8 (c), that none of the language used in any section of the act should be interpreted as infringing or endangering the fundamental rights of employers, employees, and labor organizations to air their grievances and to speak their minds openly in industrial disputes. Section 8 (c) is thus made the safety valve of the act, a reminder that whatever another provision, read alone, may seem to mean, it cannot be used as a prohibition against free speech. \* \* \*



On the basis of the vote of three members of the Board, the carpenters and its business agent Said were directed to cease and desist from inducing Klassen's employees by striking, "picketing, promulgating, and circulating we-do-not-patronize lists" where an object of such activity is to force Klassen to stop doing business with Wadsworth. The union was also directed to "withdraw support and sponsorship of the picketing" and the we-do-not-patronize list. The union was also required to post at its business office a notice summarizing the Board order.

On the petition of the Office of the General Counsel, the district court issued an injunction against the carpenters on January 8, 1948. The court of appeals for the tenth circuit upheld the injunction on November 2, 1948.

MR. VAN ARKEL. Now, I can see the possibility that in this Chicago newspaper strike the appeal by the president of the union to the members of his union assembled in a strike meeting not to buy Chicago newspapers because they were on strike against them would not be held to be a protected exercise of free speech. That is the kind of avenue which, it seems to me, is opened up by this decision.

SENATOR MORSE. Well, is it not the same avenue which would lead to the conclusion that they could not even carry an advertisement setting forth a nonpatronizing list?

MR. VAN ARKEL. I think so, Senator. When they hold that the we-do-not-patronize list, which is merely an appeal to the general public to assist the union by not patronizing certain products which are conceived to be unfair, then I ask in all sincerity what free speech is there left for unions. I mean, what else can they do in a strike situation?

I think this decision closes out the last forlorn hope that the labor movement might live with the Taft-Hartley Act, because the one hope that there was under Taft-Hartley Act was that the free-speech provision would be given such an interpretation that certain legitimate and always recognized activities of labor unions would continue to be recognized as valid, namely, the right to post a picket, the right to appeal to the public, and so forth.

Now that is out, so that there is no chance any more, as I see it under Taft-Hartley, if this decision ever gets to the court and if it is sustained by the court, that any union can win any strike.

SENATOR MORSE. I completely agree with you. On the time of the Senator from Montana, I say to you, Mr. Van Arkel, that I do not know what more proof we want of the need for a drastic revision of the Taft-Hartley law than the decision of the National Labor Relations Board handed down this morning on the Hodgson case. We cannot laugh it off.

MR. VAN ARKEL. It is extremely serious.

SENATOR MORSE. The decision touches some basic rights of workmen in this country, the exercise of which I always thought was protected by constitutional guaranties. American labor ought not treat this lightly. If the law cannot be changed in that respect, labor had better dig in now and make perfectly clear that it will take the necessary steps to see to it that the freedom is restored to the ballot boxes of America.

SENATOR HILL. The Congress cannot pass a statute denying to the people their fundamental constitutional basic rights; is that right?

SENATOR MORSE. If a freshman in my law class, even when he was a freshman, did not catch that point, he would have been transferred to another division of the university before the end of the term, as not possessing that mental ability that would make it possible for him to do work in a standard law school.

Mr. VAN ARKEL. Well, that about covers the point I intended to cover, gentlemen.

I would like, however, in conclusion to stress a couple of points which I do not think have been made before the committee. I have tried to discuss the Taft-Hartley Act as it has operated in the reported decisions and in the cases in which we and other union attorneys have been involved. But that does not begin to tell the story.

May I cite an example? A few weeks ago a union representative came into our office and said, "We have been asking for a 15-cent wage increase, and the employer says it is illegal under Taft-Hartley for us to ask for 15 cents."

So, we got in touch with the employer lawyer. We had heard some "beauts" under Taft-Hartley, but we had not yet heard that a 15-cent wage demand was unlawful, and we found out it was unlawful because the individual employee now has the right to present his own grievance.

The employer had learned that there were a few men in the plant who were willing to accept a 3-cent wage increase, so he insisted that under Taft-Hartley it was illegal for the union to ask for 15.

Now, that is an extreme example of what has been going on in every collective-bargaining negotiation all over the country ever since Taft-Hartley was passed.

I participate in it myself. This act is so complex, so contradictory, so vague, so confused, that it is a stupid lawyer indeed, employer lawyer, who cannot take some union proposal and say, "This is illegal under Taft-Hartley because," and collective bargaining has ceased to be a matter of talking about wages and hours and working conditions, and has come to be a matter of lawyers disputing across the table the meaning of a statute while the employers and the union representatives sit and doodle and yawn and scratch their heads and wish to God that the lawyers would get through with their business.

It is the most effective impediment to anything that anyone would call collective bargaining that could be devised, because it gives employers in negotiations the chance to slough off any union demand as unlawful.

Now, that is bad enough when unions are represented by lawyers because even lawyers cannot give sure answers, as this decision this morning indicates. I would have said up until this morning that a we-do-not-patronize list was completely lawful even under Taft-Hartley; yet here I find that I am wrong.

Many unions, small unions particularly, cannot afford legal representation, and the minute the employer says or his lawyer says "Oh, but this is illegal under the Taft-Hartley law," they say, "Well, we are sorry; we did not know that. We will withdraw the demands."

So that this act has cut right down into the core of collective bargaining, and it has deprived every union, I am confident, which has engaged in negotiations of things which it otherwise would have obtained, and should have obtained, for its members, because of the specious and long-winded and elaborately contrived arguments by employer attorneys.

Now, that has gone even further, because it is also true from a few instances which have come to my attention, I believe, that agents of the Labor Board, when they get a charge filed by an employer, have an understandable desire to settle the case.

The mere arrival of a Government agent on the scene, his mere statement that "This is unlawful under Taft-Hartley or may be unlawful under Taft-Hartley," is, in most cases, enough to make unions stop the particular conduct.

Now, that can be extremely serious because it means that the most strained interpretation of Taft-Hartley is the rule which is applied in practice. It is not even the rule of the cases or the rules which are laid down by the Board, at least in this period of great uncertainty. It has been what any Board agent wanted to say might be illegal conduct under the act that has determined the conduct of unions because they do not have the money, and they do not want to get into the trouble of fighting an injunction case and a proceeding before the Board, and all the rest of it.

Now, all of these things taken together have resulted in a confusion which grows daily worse confounded.

I would like to call your attention to appendix B in my statement. We had four—four and a half, I should say, perhaps—there were actually five proceedings but two were consolidated, and we had five proceedings before trial examiners of the Labor Board.

On the same allegations, with the same testimony introduced in each case, in addition to an injunction, and a contempt action, I have summarized on this page what the trial examiners have decided in those four cases.

Out of 23 important issues involved in this litigation, they disagree on 18. Now, when four trial examiners hearing the same evidence on substantially the same allegations reach conflicting views in 18 out of 23 issues, I insist to you that no union and no union employer can know what is lawful, what is unlawful, what may get him into trouble, what may embarrass the union, and the like. That is a serious point.

I plead with you that any statute that is drafted be drawn so clearly, be studied through so carefully that the possibility of this kind, to my mind, disgraceful result indicated by these four cases, can never arise again.

Sneator HILL. Mr. Van Arkel, before you leave the stand, you could sum up for us the rights the strikers have under the Taft-Hartley law as compared to the rights they had under the Wagner Act.

Mr. VAN ARKEL. Well, Senator, certainly one, I thought, of the finest provisions of the Wagner Act is section 13 of that act, which stated that "nothing in this act shall abridge in any respect the right to strike," and that provision of the act was, I think, religiously observed by the Labor Board and by the courts. That is terribly important, because as soon as you deprive the labor unions of the right to strike under any circumstances, efforts will be made to extend that area, and finally labor organizations find themselves crippled in what they want to do.

Now, under the Taft-Hartley Act reservations were added, that nothing shall affect the right to strike or the qualifications or limitation on that right.

Then, in section 8 (b) (4), you had certain specific limitations on the right to strike, limitations which, as I tried to develop earlier in my statement, Senator, were in many cases the denial of the right to strike where the object of the employer was to break the union.

Now, when you remove from a labor organization the right to strike in protest against efforts to destroy it, and insist that the labor organi-



zations stand by docilely, while the organization is wiped out of existence, you have effectively destroyed the labor union in America because there is nothing more important than the right to strike when its existence is jeopardized.

Now, how far it goes beyond that, Senator, I cannot say.

Allegations are made that a strike in aid of an unfair labor practice in section 8 (b) (1), (A) is unlawful, in 8 (b) (2) is unlawful; in section 8 (b) (3) is unlawful. There is a great field of uncertainty there where I defy any union lawyer to competently advise his clients concerning their exact rights to strike and not to strike. I can be confident that given almost any strike in the United States you can find some theory on which that strike can be held to be illegal, at least the claim can be made.

Senator MORSE. May I ask one question on this?

Senator HILL. Yes.

Senator MORSE. Mr. Van Arkel, you covered it, but let us point it up. Would you put in the record your view as to the different position of a striker under the Taft-Hartley law as compared with his rights under the Wagner Act in respect to the right subsequently to vote in representation cases?

Mr. VAN ARKEL. That is true, Senator, I was thinking of the right to strike qua the right to strike. So far as the rights of the individual are concerned, I think the legislative history of Taft-Hartley makes it clear that any employee who participates in a strike which is unlawful in any respect loses his status as an employee, and his right to reinstatement or to the processes of the Labor Board.

More importantly, and the point that you bring up, if the strike is an economic strike and the employee is replaced, he loses his right to vote in an election.

Now, at that point, if an election can be called for, the strikebreakers will have the right to vote, and the strikers will not have the right to vote.

Senator HILL. You mean the strikers will not have the right to vote; the strikebreakers will have the right to vote.

Mr. VAN ARKEL. That is right. That is what I mean to say, and the strikers will not have the right to vote.

If a company union is organized among the strikebreakers and if that wins the election and is certified, your strike then becomes an unfair-labor-practice strike under section 8 (b) (4) (C) because it is then a strike against a Board certification, so that such a strike then is subject to all the provisions for mandatory injunctions, the right to sue in damages, unfair labor practice proceedings before the Board, loss of employee status, and all the myriad of penalties which this act throws on union workers who engage in conduct which is prohibited by the statute. So that by that simple device an employer cannot only break a union and get a new union in, but he can also get an injunction against the strike as a matter of right.

Senator MORSE. The effect of it, in a representation case is that when he goes out on strike the worker, as far as any further rights under the law are concerned, knows that if the employer hires a strike-breaker the worker has, in effect, quit his job.

Mr. VAN ARKEL. I think that is correct, Senator; and, of course, I should point out that is a terrific impediment to collective bargaining because the employer is going to feel under no compulsion to bargain

with employees who, for all practical purposes, are no longer employees.

Senator MORSE. It is a terrific weapon to give the employer.

Mr. VAN ARKEL. Of course.

Senator MORSE. It is to be contrasted with the situation under the Wagner Act where union workers had the right to be considered, at least, as having some vestige of interest in the job when they went out for economic reasons, as evidenced by their right to vote in a representation election.

Mr. VAN ARKEL. Exactly, and, of course, it is exactly during the strike that you most want to encourage collective bargaining. That is the time when you want it and need it most.

Senator HILL. That is the proper way to bring an end to the dispute, is it not?

Mr. VAN ARKEL. Of course, Senator, and this, in effect, puts a premium on not bargaining collectively in an effort to bring a strike to an end.

Senator MORSE. And you cite this discriminatory practice as another bit of evidence of the fact that the Taft-Hartley law is a strike-breaking weapon.

Mr. VAN ARKEL. Emphatically, Senator, and I would add a union-busting weapon, and I would say what I have returned to a couple of times, but I think is worth repeating over and over again, that it is the act as a whole which is bad.

Senator MORSE. Direct that to the Senator from Alabama, not to me. You are on his time. [Laughter.]

Mr. VAN ARKEL. I say that this act cannot be amended because the parts mesh in in such way that what comes out is a mill that grinds labor between its upper and its lower millstones, and unless you get rid of the whole thing and start from scratch with something that makes sense, labor is going to be hooked by this act.

Any ingenious employer, if you just start with the process of amending Taft-Hartley, is going to be able to find in it exactly the same vices which had existed in it up to the present time.

Senator MORSE. Mr. Chairman, may we have the full statement in the transcript?

The CHAIRMAN. Yes, it will be so ordered.

(Mr. Van Arkel submitted the following prepared statement:)

STATEMENT OF GERHARD P. VAN ARKEL, MEMBER OF FIRM OF VAN ARKEL & KAISER, WASHINGTON, D. C.

Chairman Thomas and members of the committee: I appear here as a former general counsel of the National Labor Relations Board, and as a practicing attorney representing labor unions since enactment of the Taft-Hartley Act. I have been and am opposed to the Taft-Hartley Act because, in my judgment, it is unfair, unworkable, and one-sided.

That act cannot be considered in fragmentary and isolated segments. Both the Wagner Act and the Taft-Hartley Act are pieces of working machinery, not loose scraps of metal. Little purpose is therefore served by dwelling on the individual amending sections of the Taft-Hartley, such as the confusing section on guards; the superfluous provisions for professional employees; the unfair limitations on supervisory employees; the piecemeal restrictions on the review section, the hiring of economic analysts, and the right of the Board to confer with trial examiners; the dangerous discharge "for cause" provision; the cumbersome provisions dealing with the rules of evidence and standards of judicial review; the so-called equality of treatment for company unions; the grotesque free-speech provisions; the one-sided and insulting Communist affidavit and filing re-

quirements; the limitations on the frequency of elections; the outlawing of the "extent of organization" doctrine; the irritating provisions for decertification and employer election petitions, and others. The cumulative effect of all of these provisions has been to prevent the Federal Government from giving any effective redress to workers or labor organizations injured by employer unfair labor practices. Mr. Denham cites in his testimony (tr. p. 2577) a trial examiner who stated that "it is almost impossible for us to find an 8 (a) (3) (employer) discrimination any more in view of section 8 (c) of the act." If it were not section 8 (c) it would be another section; the guaranties of the Wagner Act are interred in the Taft-Hartley Act.

Had Taft-Hartley merely repealed the Wagner Act, labor organizations might have maintained themselves through their economic strength, as they did before passage of the Wagner Act. But it went beyond this to throw a Federal protection about certain asserted employer rights, the exercise of which could be used to destroy unions, and denied unions power to retaliate. Section 8 (a) (3) of the act told employers that they had the right to replace union men with nonunion men; section 8 (b) (4) (D) said that they had a free hand in assigning their work to nonunion men; and section 8 (b) (4) (A) gave employers full discretion to require union men to work on struck goods or non-union-made products. Unions were given no corresponding rights; on the contrary, they were effectively deprived of power to resist efforts to destroy them. The assurance of Federal support in union-busting activities is valuable to employers even where not exercised, for it enjoins unions to tread softly and speak meekly lest these powers be invoked.

Instead of encouraging collective bargaining, as the Wagner Act did, Taft-Hartley therefore positively discouraged it. For every trade-union, the most crucial issue is its power to survive attacks upon it. That task is hopeless when the power of employers and the Federal Government is joined. The Taft-Hartley Act admonishes American workers that collective bargaining is a Government privilege, subject to withdrawal if employers are irritated thereby, rather than a free right of free citizens.

Since I am unable to cover all the matters on which I should like to comment, I shall limit myself to discussing (1) some legal problems involved in the closed shop (2) temporary injunction under section 10 (j) (3) the problem of union rules (4) the separation of functions provision of Taft-Hartley, and (5) the rules of agency. In an appended statement I have attempted to document these matters at some greater length.

#### 1. THE CLOSED-SHOP AGREEMENT

Since the Supreme Court decisions of January 3, 1949, it may be assumed that the Congress has power to make illegal the closed-shop agreement. Whether, as a matter of policy, it is wise to do so has been adequately discussed by competent labor and industry spokesmen. I should like only to point out that the real issue is much deeper; the question to be asked is, "Have union men the right to refuse to work with nonunion men?"

Clearly, they have the individual right to refuse. The thirteenth amendment and section 502 of the Taft-Hartley Act leave no doubts on that score. Equally clearly, they will exercise that right in those industries with a long closed-shop tradition. Almost certainly they have the collective right to quit where their jobs are threatened by the hiring of nonunion men. Whether they have the right to strike, as opposed to quitting, in concert is an open question; what is clear is that, even under Taft-Hartley, an employer who hires nonunion men may quickly lose his union employees.

But, Taft-Hartley purports to lay on employers a duty to hire without discrimination; i. e., compels them to hire nonunion men. This poses a painful dilemma where compliance with the statute may entail loss of an experienced and satisfactory work force. In practice, therefore, most employers in unionized industries have continued traditional hiring practices and disregarded the unrealistic ambition of the statute—with or without the closed-shop agreement. The legal rights of all parties cannot, I suggest, be reconciled except by restoring the right of employers and unions to agree to the closed shop.

#### 2. TEMPORARY INJUNCTIONS UNDER SECTION 10 (J)

The case against the use of the injunction in labor disputes was adequately, and one had thought finally, established when the Norris-LaGuardia Act was



adopted. I have no desire to review that history. But there are some facets of the so-called temporary injunction under section 10 (j) which warrant emphasis.

First, the pre-Norris-LaGuardia evil of issuing injunctions only on a prima facie or probable case is not only restored, but made mandatory by statute. Second, there is no practicable appeal from such injunctions; the fact that they must be complied with pending appeal, coupled with the provision that the reaching of a decision by the NLRB will vacate the injunction and render the case moot, effectively precludes appeals. Third, since they normally dispose of the immediate issues in controversy they delay rather than accelerate NLRB action. Fourth, a single individual, with unreviewable authority to issue complaints and petition for injunctions is empowered effectively to police most management and labor conduct. The threat of the exercise of that power is usually quite as effective as its actual exercise.

### 3. UNION RULES

Annexed as an appendix to this statement is a list of 30 laws of the International Typographical Union which the general counsel of the NLRB has attacked as illegal under the Taft-Hartley Act. Included are such matters as laws governing apprentice training, providing that contract proposals be approved by the president of the union, covering the hiring of substitutes, establishing priority rights, requiring that vacations are not to be eliminated through arbitration, and the like. It is claimed that these laws "restrain or coerce" employers or employees, or "cause employers to discriminate," or are otherwise illegal. Enforcement of laws by union officers, elected and paid for that purpose, is claimed to be "restraint or coercion" of union members.

Most important of all, perhaps, it is claimed that it is a refusal to bargain collectively for local unions to insist on recognition of union laws. This issue is basic. As Justice Brandeis stated in *Bedford Cut Stone Co. v. Journeymen Stonecutters' Assoc.* (274 U. S. 37, 56) :

"The controversy out of which it (the labor dispute) arose related \* \* \* to fundamental matters of union policy of general application throughout the country. The national association had the duty to determine, so far as its members were concerned, what the policy should be. It deemed the maintenance of that policy a matter of vital interest to each member of the union. The duty rested upon it to enforce its policy by all legitimate means."

It is of the utmost importance that "fundamental matters of union policy of general application throughout the country," embodied in union rules or laws, not be relinquished. First, for reasons of internal union policy; if members are to have a voice in these rules they must be determined by vote of the members and not by negotiating committees in unrelated bargaining sessions throughout the country. Second, for reasons of practical trade unionism; the effect of compelling each local to negotiate separately is to restore the Ball "industry wide bargaining" amendment which was defeated in the Senate. The maintenance of uniform and stable competitive conditions cannot be achieved under such a rule.

### 4. SEPARATION OF FUNCTIONS

These provisions of the Taft-Hartley Act have, I feel, in addition to other objections already made by other witnesses, (1) denied litigants the opportunity to challenge the sufficiency of pleadings, (2) made of the NLRB a mere appendage of the office of the general counsel, (3) encouraged the taking of extreme and irrational positions by the office of the general counsel, and (4) overemphasized the position of lawyers in the handling of labor matters.

### 5. RULES OF AGENCY

Prior to the adoption of section 6 of the Norris-LaGuardia Act, unions were held responsible for actions of their members, whether authorized or ratified or even known, for the unauthorized acts of pickets, and, on occasion, for the acts of total strangers. The change in the rules of agency introduced by section 2 (13) of the Taft-Hartley Act has had the predicted results. The NLRB has laid down the rule that a union may be held responsible even though it had "specifically forbidden the act in question"; it has held an international union responsible for the acts of others because of the critical fact that it had spon-

sored a strike; and appears to have adopted the rule that a union calling a strike is responsible for "acts committed in the course of picketing or of any related activity sponsored, supervised or incited by it." Thus we return to that era before 1932 when one judge was led to inquire, "Is it the law that a presumption of guilt attaches to a labor-union organization?"

In conclusion, I cannot stress too strongly that the effect of Taft-Hartley is not revealed by the reported cases. Employer attorneys have exhausted their considerable ingenuity in claiming contract proposals, strikes, boycotts and all other forms of union activity to be illegal. These specious arguments have met with wide success, for most unions cannot afford legal representation and, even where they can, the provisions of the law are so vague, contradictory and confused that even lawyers cannot give sure answers. Agents of the NLRB, in an understandable desire to settle cases against unions, have, I am confident (though I cannot document it) induced unions, under threat of prosecution, to forego conduct which any fair observer would feel to be clearly lawful even under the act.

To illustrate the confusion of the act, I attach as an appendix a table summarizing four intermediate reports issued by trial examiners in the ITU cases. Due to the excessively litigious attitude of the general counsel, four lengthy hearings were held involving substantially the same issues and the same evidence. Of 23 important issues involved in those cases, trial examiners disagreed with respect to 18. If these supposed experts on the statute disagree so sharply, it is hardly to be anticipated that trade unionists and workers will know either their rights or their duties.

For these reasons, and many others which I have not had an opportunity to develop, it is my firm conviction that amendment of the Taft-Hartley Act is impossible, that it should be immediately repealed, and that it should be replaced by the bill introduced by the chairman without further amendments.

#### 1. THE CLOSED SHOP

Trade unions and employers have discussed the practical problems involved in the closed-shop agreement. I should like to direct attention to some of the legal problems.

It may be assumed, since the decision of the Supreme Court in *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, and companion cases, decided January 3, 1949, that the legislature may outlaw the agreement between an employer and a union by which only union members are to be hired. But the problem is far from ending there. As Justice Rutledge pointed out:

"Strikes have been called throughout union history in defense of the right of union members not to work with nonunion men. If today's decision should be construed to permit a State to foreclose that right by making illegal the concerted refusal of union members to work with nonunion workers \* \* \* I should want a complete and thorough reargument. But the right to prohibit contracts for union security is one thing. The right to force union members to work with nonunion workers is entirely another \* \* \* I do not understand the opinion (of the Court) to foreclose this question."

The prohibition of the thirteenth amendment against involuntary servitude is, for obvious constitutional reasons, carried over into section 502 of the Taft-Hartley Act which states that nothing in the act shall be construed to require an individual to render labor without his consent. Thus, it is crystal clear that employees, individually or in concert, may quit their jobs rather than work with nonunion men. In those industries with a long tradition of trade-unionism, it may be confidently anticipated that this right will be exercised.

Whether union members may strike in protest against the hiring of nonunion men may, perhaps, be considered doubtful under the Taft-Hartley Act. We believe that there is no authority squarely in point, but recommend to the attention of the committee those cases in which the courts have indicated that this is a common law and constitutionally protected right.<sup>1</sup> Justice Holmes summarized the matter in saying that "I feel pretty confident that they (the public)

<sup>1</sup> *Allen v. Flood* (House of Lords (1898) A. C. 1); Holmes, J., dissenting in *Vegeclahn v. Guntner* (167 Mass. 92); *Pickett v. Walsh* (192 Mass. 572); *Jacobs v. Cohen* (183 N. Y. 207); *Exchange Bakery v. Rifkin* (254 N. Y. 260); *Kemp v. Division 241* (255 Ill. 213); *Grant Co. v. St. Paul Building Trades* (136 Minn. 167); *State v. Van Pelt* (136 N. C. 633); *Cohn Electric Co. v. Bricklayers* (92 Conn. 161), and the cases following *A. F. of L. v. Seling* (312 U. S. 329).

will abandon the idea that an organized refusal by workmen of social intercourse with a man who shall enter their antagonist's employ is wrong, if it dissociated from any threat of violence and is made for the sole object of prevailing if possible in a contest with their employer about the rate of wages. The fact that the immediate object of the act by which the benefit for themselves is to be gained is to injure their antagonist, does not necessarily make it unlawful" *Vegeclahn v. Guntner* (167 Mass. 92, 1906).

In either event, the quandary in which employers are placed is self-evident. Section 8 (a) (3) of the Taft-Hartley Act purports to lay on employers a duty to hire without discrimination. The fulfilling of that obligation conflicts squarely with the admitted constitutional right of individual employees to refuse to work with nonunion men; it may conflict with a constitutional right of employees to strike in protest. This Taft-Hartley dilemma has led employers to follow two courses:

1. A usual reaction is a demand that unions agree that their members will continue to work if nonunion men are hired. In reply it has been pointed out that unions cannot alienate the constitutional rights of their members, and that involuntary servitude imposed by a union is no different from that imposed by employers. There are the best of practical reasons why a union should not undertake to restrain such action in aid of the union. It seems quite clear that a statute requiring unions to surrender constitutional rights of their members would be, in itself, unconstitutional.

2. Failing such guaranties, employers have attempted to avoid raising questions—in general, with marked success, since it appears that not more than a single charge was filed under the Taft-Hartley Act alleging that an applicant for employment had been discriminated against as the result of union action. But the statutory mandate is thereby rendered fictional.

From the point of view of unions, the doubts cast on the legality of a concerted refusal to work with nonunion men are far more serious. Mr. Denham stated before this committee (Tr. p. 2045) that "I believe in the union shop doctrine which permits the employer freedom to hire whom he wishes to put on his pay roll," which is an accurate and summary description of the Taft-Hartley "union shop." This "freedom" of the employer can easily be, and has been, used to wreck unions; by swiftly or slowly replacing union men with nonunion men, or by hiring known opponents of the union to carry on disruptive activities, or through the employment of labor spies, this "freedom" means freedom in practice to wreck a labor organization. To say that this would be an "unfair labor practice" and that a union should take its case through the dilatory processes of the NLRB is merely to say that the continued existence of the labor movement is to be entrusted to a bureaucracy rather than to the economic strength of a union and its members.

In the "closed shop," neither the employer nor the union has full freedom to hire, but the interests of both are protected. The requirement that only union men be hired assures that there will not be discrimination against union members; the invariable permission to the employer to fire, under conditions agreed upon, within a stated period after hiring protects his interests in securing only competent workers.

It seems probable that closed shop conditions (as opposed to the closed shop agreement) cannot be outlawed so long as (1) union men have a tradition of refusing to work with nonunion men and (2) the constitutional right of the individual to refuse to work under conditions objectionable to him remains.

## 2. UNION LAWS

Every mature labor organization will develop a set of rules by which its members are bound. Experience will demonstrate that certain industrial practices are contrary to the interests of the union and its members, and, in such circumstances, the members will legislate against the practice. It is the duty of the officers of a union to assure compliance with the rule thus adopted.

The Taft-Hartley Act has thrown this normal and democratic union procedure into an uproar. We attach hereto as an appendix a list of 30 laws of the International Typographical Union which have been attacked by the general counsel of the NLRB as "illegal"; it will be noted that this list contains laws requiring apprentices to study courses of lessons in printing, that vacations not be eliminated through arbitration, providing that contract proposals be submitted



to the president for approval, establishing priority rights, covering the right to employ substitutes, and the like. In the *Graphic Arts* case (Case No. 5-CB-1) a trial examiner recommended that the ITU cease and desist from "requiring that the general laws, rules and decisions of the ITU be adopted by the employers as rules and conditions of employment applicable to their respective composing rooms, without bargaining with respect to them \* \* \*." Such a rule would preclude the adoption of uniform standards, for each employer would, under this theory, be entitled to bargain away these minimal conditions with any weak local union. Further, such standards would then be fixed, not by the democratic action of a majority of the union, but haphazardly by local negotiating committees. It is a requirement which would make effective trade unionism impossible.

The same trial examiner recommended that the ITU cease and desist from "threatening their members with expulsion from membership in the event of noncompliance with the laws of the ITU. \* \* \*" While his finding that this had occurred is unsupported by the record, it must be self-evident that if, as he found, such conduct constitutes "restraint and coercion" of union members, then a union is powerless to insure discipline within its own ranks. Under the Wagner Act, and under Taft-Hartley, a union may through collective bargaining make and enforce rules binding on all employees in the plant; under this interpretation of Taft-Hartley, a union may not enforce rules voluntarily accepted by its own members, but may enforce them against nonmembers.

In *Bedford Cut Stone Co. v. Journeymen Stonecutters' Association* (274 U. S. 37 at p. 56), Mr. Justice Brandeis effectively disposed of these fallacies. He pointed out that the union constitution in that case provided that "No member of this association shall cut, carve, or fit any material that has been cut by men working in opposition to this association"; that union members had agreed to be bound by this rule in joining the union; that the union "was in duty bound to urge upon its members observance of the obligation assumed"; that the union "had the duty to determine, so far as its members were concerned, what that policy should be. The duty rested upon it to enforce its policy by all legitimate means." We commend to the committee, to the same effect, *Kingston Trap Rock Co. v. International Union* (129 N. J. Eq. 570); *Cohn v. Bricklayers* (92 Conn. 161); *Bossert v. Dhuy* (221 N. Y. 342) and the numerous cases therein cited.

But, under the Taft-Hartley Act, the enforcement of union rules by union officials is claimed to be (1) "restraint and coercion" against both employers and employees under section 8 (b) (1) (A) and (B) and (2) a "refusal to bargain" under section 8 (b) (3).

### 3. SECTION 10 (J)

There is no need here to review the case against the use of the injunction in labor disputes; a conclusive documentation was provided at the time the Norris-LaGuardia Act was passed. But there are some aspects of injunctions under section 10 (j) which require elaboration.

(a) *Standard of proof.*—Before the Norris-LaGuardia Act, "courts granted the injunction despite grave doubt, on the theory that the preliminary injunction does not pass finally on the merits of the controversy. At least for labor disputes such a rationale must be rejected." Frankfurter and Greene, *The Labor Injunction*, page 78. " \* \* \* it is undeniably the fact that the preliminary injunction in the main determines and terminates the controversy in court. The tentative truth results in making ultimate truth irrelevant" (id., p. 80). Among the most serious abuses of the labor injunction was its reliance upon "tentative truth."

Under Taft-Hartley, "tentative truth" is now a statutory mandate. The "reasonable cause to believe" standard applied under section 10 (j) and (1), whether described as a "probability," or a "prima facie" case, or as the "reasonable cause to believe" of the person bringing the action, does not require the ascertainment of facts. In the case of *Evans v. ITU*, the general counsel carried this to the point of arguing (brief, February 7, p. 9) that the "issue of fact is only whether there is a probability that the unfair labor practices charged in the complaint occurred. Thus, evidence going to defense against the unfair labor practices charged is immaterial and irrelevant in this section 10 (j) proceeding \* \* \* matters of defense and mere denials are not admissible in this proceeding. \* \* \* Conflicts in evidence and other matters of defense are for the Board's consideration \* \* \*." Section 10 (j) requires the Federal courts not to inquire fully into the merits and to resolve all doubts in favor of the complain-

ant—the very abuse which it was thought the Norris-LaGuardia Act had eliminated.

(b) *Right of appeal.*—In practice, there is no appeal from an injunction granted under section 10 (j) or (1). Under the act, such injunctions are temporary and valid only until the NLRB decides the case out of which they arose. In almost no case in which an injunction was issued under section 10 (j) or (1) did a court, upon application, grant a stay pending appeal. Labor organizations are, therefore, required to comply with such injunctions, at least during the period of several months necessary to perfect an appeal and obtain a decision. But if during that period the NLRB decides the case, the injunction immediately lapses, the case becomes moot, and the union will have undertaken the heavy cost of an appeal without ever receiving a decision. In the circumstances, the taking of an appeal is no more than a bet that the circuit court of appeals or the Supreme Court will act before the NLRB does; it is not a right, and in all but the rarest cases it is not feasible.

(c) *Duration.*—These injunctions can only ironically be described as temporary. The injunction against the ITU issued on March 27, 1948; the intermediate report in the principal case issued in August 1948, but as yet, despite a rule ostensibly giving these cases priority, the NLRB has not even heard oral argument. The case before the NLRB began with the filing of charges in October 1947; during the interim period a Federal court has twice heard and decided cases (an injunction and a contempt action) before the NLRB has reached the stage of hearing oral argument. In the Sealright Pacific case, a temporary injunction under section 10 (1) issued on February 3, 1948. On May 7, 1948, the trial examiner issued an intermediate report dismissing the case. This, however, did not have the effect of dissolving the injunction; an appeal was taken, and on December 18, 1948, the circuit court affirmed the issuance of the injunction. Application for a writ of certiorari has been made to the Supreme Court; meantime, the NLRB has not yet decided the principal case. That union has, therefore, been under an injunction for over a year, despite the recommendation of a trial examiner that the entire case be dismissed.

(d) *Other considerations.*—There are further imponderables involved in section 10 (j) injunctions. First, it seems highly probable that the issuance of such injunctions delays substantially NLRB procedures. Since the injunction normally resolves the immediate issues against the union, all pressure on the NLRB to act speedily is removed; indeed, there may be real incentives to delay action. Second, the threat that injunctions will be applied for certainly can be, and undoubtedly has been, used by both employers and NLRB agents to bludgeon settlements of cases where the conduct complained of is clearly lawful or of only doubtful impropriety. Third, the placing of this power in a single individual means concentration of legal and economic power over employers and unions which is extremely dangerous.

#### 4. SEPARATION OF FUNCTIONS

The unwisdom of the separation-of-functions provisions of the Taft-Hartley Act has by now been fully demonstrated. Concentration of power in the field of labor relations is, in and of itself, evil. Only the give-and-take of differing views can produce balanced and rational views in so emotionally charged and basic a field.

The committee has already explored the conflicts between the general counsel and the NLRB which necessarily stem from this division of functions. There are other consequences which have not been developed.

1. Under normal legal processes a party appearing before a tribunal has an opportunity to challenge the legal sufficiency of the pleadings against him. This right is important, for if no cause of action is stated, the expense and time of a trial may be avoided or notably shortened. Under integrated administrative procedures, the agency issuing the complaint will, through appropriate procedures, make certain that in its judgment a case is stated if the facts are proved. Under Taft-Hartley, since the NLRB in no way supervises the issuance of complaints, it is entirely possible for the general counsel to issue a complaint which, in the judgment of the Board, does not state a cause of action. In the circumstances, one would suppose that trial examiners would be given power to dismiss complaints, or allegations in complaints, if in their judgment no cause of action was stated. But the NLRB has immediately and consistently reversed trial ex-

aminers who did so, and has refused to hear oral argument or to allow briefs to be submitted. In consequence, litigants have neither the assurance that the agency believes that a case has been stated, nor the means of determining whether it does.

2. In practice, "division of functions" is more apt to mean "final decision by the general counsel." The power to seek injunctions has been delegated by the NLRB to the general counsel for fear of compromising its rectitude. The appointive and removal power over the field staff can be used to frustrate Board policies and directives. In the *Matter of Times Square Corporation* (79 NLRB No. 50) the Board decided that it would not review the general counsel's determination of the status of strikers; thereby delegating to him the unreviewed power to determine whether strikers were economic or unfair-labor-practice strikers and therefore whether they might vote in an election. Mr. Denham's testimony that the NLRB asked for his comments on the *Northland Greyhound Lines* decision (23 LRRM 1074) before it was issued demonstrates that in practice there is nothing in the present arrangement that could properly be called a separation of functions. The NLRB merely sits at the end of an assembly-line process which consumes 519 days and is little more than an appendage of the office of the general counsel.

3. Lacking final power, the general counsel is encouraged to adopt extreme and irrational views. I would cite his arguments that unions should be responsible for all the results of a strike, whether authorized or ratified or committed by agents or not, the claim that unions should pay workers for time lost during a strike, and the argument that enforcement of union rules by their officers constitute "restraint and coercion" as examples of positions which would be taken only by a prosecutor. The rejection of these arguments by the Board demonstrates that the responsibility of final judgment is a calming influence. But in the meantime litigants are harassed and put to needless expense.

#### 5. AGENCY

Section 6 of the Norris-LaGuardia Act required "clear proof of actual participation in or actual authorization of \* \* \* or actual ratification \* \* \* of acts after actual knowledge thereof" before a union could be held responsible for the acts of individual officials, members, or agents. This was repealed by section 2 (13) of the Taft-Hartley Act.

A few extracts from the Senate committee report on the Norris-LaGuardia Act (Rept. 163, 72d Cong., 1st sess.) show the evils eliminated by the 1932 Act and, unfortunately, restored by Taft-Hartley:

"It has often occurred that employers themselves have secured the services of detectives who \* \* \* have gained admission into labor unions. When this happens these detectives are usually doing everything within their power to incite employees who are on strike to commit acts of violence, and such detectives, contrary to the definite instructions of labor-union leaders, sometimes commit unlawful acts for the express and only purpose of laying the foundation for injunctive process, of bringing discredit upon the union, and of making its officers and members liable for damages.

"\* \* \* where the officers of the labor union are doing everything within their power to prevent acts of violence from being committed by any person, the law should fully protect them and save them and the members of their organization who are following their advice from liability in damages because of unlawful acts of persons who are either directly or indirectly connected with those who are trying to defeat the purpose of the strike.

"Why should an officer of a labor union, who has specifically advised members that violence must be avoided, become responsible for the hot-headed action of some member in perhaps assaulting a strikebreaker? \* \* \*

"The doctrine that a few lawless men can change the character of an organization whose members and officers are very largely law-abiding is one which has been developed peculiarly as judge-made law in labor disputes, and it is high time that, by legislative action, the courts should be required to uphold the long-established law that guilt is personal and that men can only be held responsible for the unlawful acts of associates because of participation in, authorization, or ratification of such acts."

The committee expressly referred to the following discussion of certain court decisions on pages 74 and 75 of *The Labor Injunction*, by Frankfurter and Greene:



"For the solution of the other important issue of fact—responsibility for acts of disorder—"presumptions" are invoked. The union and its officers may repudiate the violent deeds, may solemnly disavow them, may importune the strikers to be orderly and law abiding, and yet may be held. 'Authorization' has been found as a fact where the \* \* \* union has failed to discipline the wrongdoer; where the union has granted strike benefits. \* \* \* As one New York judge rhetorically asks, 'Is it the law that a presumption of guilt attaches to a labor union association?'"

Experience under the act shows that the bitterly criticized decisions of the past have been fully revived. In the *Sunset Line and Twine Company case* (79 N. L. R. B. 207) the Board laid down the rule that a union may be held responsible for the acts of an agent even though it had specifically forbidden the act in question. It held the local union responsible for the action of a crowd of over 200 persons which gathered at the plant without fault on the part of the union largely on the ground that the union's business agent made no attempt to induce pickets, some 15 or 20 in number, to refrain from participating in the demonstration of force. It held the union liable for the act of another official although there was admittedly no evidence showing the relationship between that officer and the union and although it paid lip service to the elementary principle that the burden of proof is on the party asserting an agency relationship, both as to the existence of that relationship and as to the nature and extent of the agent's authority. It held the international union responsible for all of the acts committed by officers, pickets, strikers, and others, although the record does not show the precise character of the relationship between the respondents because of the critical fact that the international was a cosponsor of the strike in the course of which the lawless acts were committed.

The *Perry Norvell case* (23 L. R. R. M. 1061) involved a wildcat strike organized and sponsored by a workers' committee. The Board adopted the general counsel's contention that the committee was responsible for all acts of the committee members despite the absence of showing of any authorization or ratification, because "The committee was formed after the inception of the strike with the avowed purpose of looking out for the welfare of the shop workers on strike. \* \* \* Its objective was to make a success of the strike. \* \* \* Whatever governing force perpetuated this strike thereafter flowed from the committee, acting through its chairman and committeemen." While the Board rejected the general counsel's argument that the committee was responsible for the acts of rank-and-file strikers who were not committeemen, it did so because there is no showing that these acts were committed in the course of picketing or of any related activity sponsored, supervised, or incited by the committee. On this line of reasoning a union would be responsible for any unauthorized and unratified act of any person on a picket line or one who was engaged in any related activity that was originally sponsored by the union.

#### APPENDIX A

##### UNION RULES CLAIMED TO BE ILLEGAL BY GENERAL COUNSEL IN ANPA-ITU CASE (APPENDIX TO BRIEF, FILED JUNE 24, 1948)

Article I, section 8: Apprentice oaths.

Article I, section 11: Requiring apprentices to study union lessons in printing.

Article I, section 12: Apprentices must have working card.

Article I, section 14: Apprentices must complete lessons in printing to be admitted to the union.

Article I, section 15: Providing for a local union committee on training of apprentices.

Article I, section 17: Local unions to include appropriate clauses in agreements to carry out the above apprentice requirements.

Article II, section 2: ITU laws not to be subject to arbitration.

Article II, section 4: Vacations not to be eliminated through arbitration.

Article III, section 1: Contract arbitration procedures to be followed except that local and ITU laws shall not be arbitrated.

Article III, section 2: Contracts must be in accord with ITU laws and approved by the ITU president.

Article III, section 4: Contract proposals to be submitted for approval of ITU president.

- Article III, section 5: Members may refuse to work on substandard or struck work.
- Article III, section 11: Composing-room work to be done by journeymen and apprentices.
- Article III, section 12: Composing-room work under the jurisdiction of the ITU.
- Article V, section 1: Foreman the only recognized authority.
- Article V, section 2: Cause for discharge and right to appeal a discharge.
- Article V, section 3: Discharges to be in order of priority in the office.
- Article V, section 4: Discharges where departments are recognized to be in order of priority.
- Article V, section 7: Right to appeal discharge case to local union.
- Article V, section 8: Right to employ substitutes.
- Article V, section 10: Foremen and journeymen in union shops must be union members in good standing.
- Article V, section 11: Only journeymen and apprentices recognized.
- Article VII, section 1: Only members to operate composing-room machinery.
- Article VII, section 2: Learners must be union members.
- Article VII, section 5: Members to operate substitute machinery.
- Article VIII, section 1: Machine tenders to be union members.
- Article IX, section 2: Local ad copy to be reproduced.
- Article X, section 2: Local unions to maintain a priority list.
- Article X, section 3: Priority rights limited to a single office.
- Article X, section 5: Members working for ITU do not lose priority.

#### ITU LAWS FOUND ILLEGAL BY EXAMINER IN PIA CASE

- Article I, section 17: Contracts to contain apprenticeship laws of the ITU.
- Article II, section 2: ITU laws not to be submitted to arbitration.
- Article II, section 4: Vacation clauses not to be eliminated through arbitration.
- Article III, section 1: Local and ITU laws not to be submitted to arbitration.
- Article III, section 2: Contracts to be in accord with ITU law.
- Article III, section 4: Contract proposals to be approved by ITU president as in accord with ITU law.
- Article III, section 5: Members not required to handle struck or substandard work.
- Article III, section 11: All composing-room work to be done by journeymen or apprentices.
- Article III, section 12: Composing-room work under the jurisdiction of the ITU.
- Article V, section 2: Grounds for discharge and right of appeal.
- Article V, section 10: Foremen and journeymen to be union members.
- Article VII, section 1: Machine operators to be union members.
- Article VII, section 5: Operators of substitute processes to be union members.
- Article VIII, section 1: Machine tenders to be union members.
- Article IX, section 2: Local ad copy to be reproduced.

#### RECOMMENDED ORDER, TRIAL EXAMINER MEYERS, JUNE 4, 1948 (P. 76)

ITU shall (a) Cease and desist from: (1) In any manner promulgating, disseminating, pursuing, observing, or in any wise giving effect to or ordering, instructing, requiring, recommending, inducing, encouraging or in any wise causing any of the subordinate unions \* \* \* and their members or any of them to promulgate, disseminate, pursue, observe or in any wise give effect to, any policy, practice, or course of conduct including without limitation \* \* \* (d) laws, rules and decisions of the International Typographical Union. \* \* \*

#### RECOMMENDED ORDER, TRIAL EXAMINER RINGER, APRIL 22, 1948

- (2) Rescind and cease to give effect to any provisions in its constitution, by-laws, general laws, policies, rules, resolutions, decisions, instructions, or directions, which are inconsistent with or in conflict with these recommendations.

## APPENDIX B

*What the trial examiners want to do to the ITU*

	Baltimore	Nassau	PIA	ANPA
What they found:				
1. ITU has refused to bargain collectively.....	No.....	No.....	No.....	Yes.
2. Locals have refused to bargain collectively.....	Yes, No. 12.....	Yes, No. 915.....	Yes, Nos. 2, 7, 8, 16, 18, 40, 103.	Yes.
3. ITU has coerced its locals and members.....	Yes.....	Yes.....	Yes.....	No.
4. Locals have coerced employees.....	Yes.....	Yes.....	Yes.....	No.
5. ITU and locals have coerced employers.....	No.....	No.....	No.....	Yes.
6. ITU has sought to induce employers to discriminate against nonunion men.	Yes.....	Yes.....	Yes.....	Yes.
7. Locals have sought to induce discrimination.	Yes.....	Yes.....	Yes.....	Yes.
8. Conditions of employment illegal.....	Yes.....	Yes.....	Yes.....	Yes.
9. Form P-6A illegal because of:				
(a) 60-day cancellation clause.....	Yes.....	Yes.....	Yes.....	Yes.
(b) Reproduction.....	No.....	Decision avoided.	Decision avoided.	No.
(c) Jurisdiction.....	Yes.....	Yes.....	Yes.....	No.
(d) Substandard goods.....	No, with reservations.	Decision avoided.	Yes.....	No.
(e) Not compelling members to work with nonunion men.	No.....	Decision avoided.	Yes.....	No decision.
(f) Limitation of liability.....	No.....	Decision avoided.	Yes.....	No.
(g) Refusal to cross picket lines of ITU.	No.....	Decision avoided.	Yes.....	No.
(h) ITU and local laws.....	Yes.....	Decision avoided.	Yes.....	No.
(i) Nonarbitrability of laws.....	Decision avoided.	Decision avoided.	Decision avoided.	No.
10. Strikes and slow-downs illegal.....	Not in issue.....	Decision avoided.	Yes.....	No.
11. New York commercial agreement illegal because of:				
(a) Normal-account clause.....	Not in issue.....	Not in issue.....	Yes.....	No.
(b) ITU laws clause.....	Not in issue.....	Not in issue.....	Yes.....	No.
(c) Competency clause.....	Not in issue.....	Not in issue.....	Yes.....	No.
(d) Hiring clause.....	Not in issue.....	Not in issue.....	Yes.....	No.
(e) Limitation of liability.....	Not in issue.....	Not in issue.....	Yes.....	No.

Senator HILL. I wonder, and I would like to yield to the Senator from Oregon if he wishes me to do so, if he would put into the record the statement that he made to the press yesterday.

Senator MORSE. Yes, I would be delighted to put it in.

Senator HILL. I would like to see it in the record.

(The statement submitted by Senator Morse is as follows:)

## STATEMENT BY WAYNE MORSE, UNITED STATES SENATOR FROM OREGON

As the Senate hearings on labor legislation draw to a close several impressions stand out very clearly. It has been shocking to observe the un-Christian attitude toward labor which has characterized the testimony of many of the employer witnesses. It is clear that many employers still look upon labor as a commodity to be hired as cheaply as possible. In order to hold labor down the selfish motivations of many employers, as represented by the philosophy of the United States Chamber of Commerce and the National Association of Manufacturers, cause them to urge the retention of such restrictive legislation as the Taft-Hartley law which the evidence presented to the committee shows discriminates unfairly against labor.

This attitude of the selfish proponents of the Taft-Hartley law constitutes a Judas betrayal of the capitalistic system. I am convinced that the overwhelming majority of American employers do not share the class-conscious, selfish attitude toward labor which has been demonstrated by many of the witnesses appearing before our committee. I hold to the view that the capitalistic system is the best economic medium which we could possibly have for putting into practice the Christian principles of brotherhood.



Those forces within our American economy who want to keep labor weak in order to control a large share of the wealth created by labor are contributing to the resentment that is developing as a result of the class conflict created by such unfair legislation as the Taft-Hartley law. What we need is legislation which is fair to both employers and labor because it is only such legislation in the field of labor relations which will make it possible for our capitalistic system to move forward in promoting the common welfare of a united people devoted to the ideals of social justice.

The retention of the Taft-Hartley law will continue to split our economy into class warfare. It will increase the tendency in our country to limit our devotion to Christian principles to Sunday go-to-church meetings instead of putting them into practice through our economic relationship 7 days a week. The labor legislation which we pass must likewise check the abuses of labor because fair play must work both ways if we are to develop a society of Christian brotherhood as a substitute for economic warfare.

One of the finest things which has come out of our Senate hearings has been the fair-minded objectivity with which Bob Taft has considered testimony and evidence on the shortcomings of the Taft-Hartley law. He and I may not agree on all details as to the need of drastic revision of the Taft-Hartley law but I satisfied that we are much nearer together on the point of the need for a law less drastic against labor than we were in 1947 when the Taft-Hartley law was passed.

Senator HILL. Let me ask one other question, Mr. Van Arkel.

We know that under the secondary-boycott provisions unions cannot act in concert. I wonder if you would tell us if there is any difference under the Taft-Hartley law with respect to employers rights to act in concert in contradistinction to the denial of this right to unions.

Mr. VAN ARKEL. Well, Senator, that, of course, is a point which again buttresses Senator Morse's characterization of the inequalities of the act.

The common law on this subject, I think, is quite clearly established. It said that in an industrial dispute the participants, that is the employer and the union, had the right by peaceable means to seek to enlist aid to assist them in that dispute.

Now, Taft-Hartley, by this denial of the right to induce or encourage other employees has said to the union "You may not seek assistance outside your own ranks," that is to say, it fragmentizes the labor dispute so far as labor is concerned, and says "You may not seek any allies," but it puts no prohibition on the employer, and I think this case has already been cited to the committee, but I think it warrants repetition, of a plant which was manufacturing some steel products.

The employees struck; the employer thereupon solicited as an ally an employer across the street in the same line of business, and asked him to turn out that product. His employees, the employees of the second employer, that is, were members of the same local which was on strike across the street. If they refused to do that work, then they are guilty of a secondary boycott and subject to the mandatory injunction, suit for breach of contract, if they had a contract, suit for damages by whoever is injured, no matter how remote that injury, loss of employee status, and an unfair labor practice proceeding before the Board.

Now, no union can take that amount of bricks piled on them at one time. The net result is they have to work as strike-breakers or members of their own local union, and that is one reason why labor calls this a slave labor act, under circumstances where they would like not to work, and where they are compelled to work.

Senator HILL. Is that the Granite City case you cited?

Mr. VAN ARKEL. I am not certain of the name of it, Senator.

Senator HILL. But there is no limitation or restriction on employers acting in concert together.

Mr. VAN ARKEL. Certainly not.

Senator HILL. But a very definite denial to the unions to act in any concert, is that not true?

Mr. VAN ARKEL. Completely true, Senator, and in that respect I would like to point out that it reverses completely and makes completely one-sided the common law on this subject which the courts have been developing over a period of many, many years.

Senator HILL. Many, many years; through the years.

And most of those years have not been years which were particularly conducive or favorable to trade-unions; is that not true?

Mr. VAN ARKEL. I think that is right, Senator. I think that the courts in this respect, at least, have recognized better than those Senators who voted for the Taft-Hartley Act, the economic interest that a union must have in obtaining allies to win an economic dispute.

Senator HILL. Of course, if you can divide and separate your opposition, you can usually conquer; can you not?

Mr. VAN ARKEL. Of course.

Senator HILL. In all military history there is nothing sounder than that; is that true?

Mr. VAN ARKEL. Well, it is difficult enough to get labor to cooperate in an industrial dispute anyhow. When you tell them by force of law they may not do so, you have effectively weakened every union in any industrial dispute they may have, and, of course, this goes back—in collective bargaining they are weaker because the employer knows if the union strikes it cannot seek allies, so necessarily employers are less interested in giving unions things legitimately demanded because they know the union will not have the economic power to obtain them if it comes to a show-down.

Senator HILL. Then, the union is weakened so much by the act.

Mr. VAN ARKEL. That is right. So again, I say, there is a positive interference here with the process of collective bargaining.

Senator HILL. Would you comment briefly on what has been the effect of the temporary injunction and the contempt order on collective bargaining in the printing industry.

Mr. VAN ARKEL. Well, Senator, I would say that the first effect of the injunction was to decide adversely to the union certain important legal issues and certain important legal positions which we had taken on, as I say, a probability that those matters were effectively resolved against the union.

In the second place, and I think perhaps even more important, the real impact has been that collective bargaining has not been with employers. Collective bargaining has been conducted with the Federal court and with the agents of Mr. Denham.

Now, Mr. Findling gave some testimony here about some talks that we had after the injunction was issued in Indianapolis. I disagreed with some of the statements that Mr. Findling made in describing that conference, but I do not want to quibble about what was said there.

The real point of the matter was that Mr. Findling was telling us under the injunction what kind of proposals this union might make

in the course of collective bargaining, and that it was not the union officers bargaining with the employers in the industry, but we, as attorneys, for the union arguing with an agent of Mr. Denham concerning what proposals might appropriately be made by the union, and might appropriately be accepted by employers.

Senator HILL. You could not call that free collective bargaining, could you?

Mr. VAN ARKEL. I do not call it collective bargaining at all, Senator. Senator HILL. Surely.

Mr. VAN ARKEL. This was a legal quibble. I am not a competent person in the printing trade, and Mr. Findling is even less competent; I say that with all due respect, and the Federal court never had much experience in the printing industry except to read some cases.

Now, I suggest that we are not the appropriate people to conduct the practical affairs of this industry, and in that I include myself.

The whole thing got to be fantastic, Senator, to the point where the union was held in contempt because they failed to include in a contract a proposal which employers were free to reject, and often did, a provision for a tie-breaker, a neutral tie-breaker, on a clause setting up a joint union-employer apprentice training committee.

Now, I surmise that not even Senator Taft supposed that even under the Taft-Hartley Act a union would be held in contempt of court for failing to include some language in a contract proposal dealing with the training of apprentices. But that is the effect the act has had, and how can you conduct collective bargaining when, as innocent a proposal as this, which emphatically cannot shock any person in the United States, is a reason why union officers are held in contempt of a decree of court? It ceases to be anything that could be called collective bargaining, and becomes a kind of over-all supervision of the minutia of conduct in collective-bargaining negotiations by a single officer of the Federal Government.

If I were an employer I would be quite as scared of it as I am as a union attorney. It seems to me that it represents an intrusion of the Federal Government into the practical affairs of our people which is pointed sharply in a Fascist direction, and if it does not go that far it, at least, means a governmental control of the primary interests of all of our citizens, which I regard with horror. The extent to which it has been carried is worse than I thought it would be.

Senator HILL. Do not these intrusions constitute serious threats to our American free-enterprise system?

Mr. VAN ARKEL. Well, it is for that reason that I view them with such abhorrence, Senator. Free collective bargaining has been our goal up to 1947, but what have we substituted for it? A control of industry and labor relations by people with no practical knowledge of the problems of the industry, and by courts who are trying in a groping way to apply a vague and confused and contradictory statute. I do not think that is the American free-enterprise system or anything approaching it.

Senator MURRAY. Mr. Van Arkel, in the proceedings which we had here on the nominations to the Labor Relations Board, Mr. Denham appeared and testified, and in his testimony he says on page 13 of those hearings:

I think it is my duty to construe the bill, if I know and am clear in understanding what the intent was. If there is something which is apparently in con-



flict with some other phase of it, when you take it in the over-all, and what those problems are you cannot tell until you begin to work with it.

I then asked him this question :

It has been contended by some that the law is very vague in many respects and that its enforcement will not accomplish the purposes that are intended by the Congress.

Mr. Denham answered :

As I see it, you take this act, Senator, and break it down. Now, on first reading it, it sounds complicated; but if you take the act and break it down into its component parts it seems to me it sets up four or five or six different channels applicable to as many different policies, and when you finally get your problem to the point where you can identify it and you lay it in the channel, the act simplifies itself just on its application.

Would you explain to me what he had in mind, what he meant by that?

Senator NEELY. Mr. Chairman. I make the point that he meant break down the Taft-Hartley Act, and break up all the labor unions, and then, in his opinion, everything will be all right.

Mr. VAN ARKEL. Well, Senator, I cannot hope to explain that. All I can say is that, for example, we proposed—and when I say “we,” I mean the International Typographical Union—in collective bargaining conferences, certain clauses dealing with the jurisdiction of the union.

Now, the jurisdiction of a union is an important matter, because jurisdiction defines the work that will be done by members of the union, and if they can protect the area of the work which they are doing and prevent its being assigned to nonunion men or lower paid workers, they can go a long way in protecting their craft and the jobs and the interests of their members.

We were told that that was illegal to ask for such clause. One trial examiner so found. We presented a clause asking employers, since the employer had complete freedom under the Taft-Hartley Act, not to take struck work. There was nothing in the law which required the employer to take struck work. We conceive that in collective bargaining we can ask employers not to require union members to work on struck goods.

We were told that was illegal, not because of anything the act said but because it was contrary to the policy and spirit of the act, and two trial examiners found that demand was unlawful, a demand in collective bargaining that union members not be required to work as strike-breakers.

We asked for a 60-day cancellation clause, a clause which has been standard in collective bargaining negotiations since the beginning of collective bargaining, and which many employers and unions have found to be desirable for one reason or another. We were told by four trial examiners that that was unlawful under the Taft-Hartley Act, and so down the line, Senator. Every proposal that the union has advanced for the sole purpose of protecting the existence of this organization against destruction by employers has been attacked as illegal and has been frequently found to be illegal.

Now, Mr. Denham cannot answer those questions. He has taken a position, but he cannot tell me with any assurance that those clauses are unlawful. The trial examiners themselves divide on the matter, and the Board has not yet decided a single case.

Now, that is the kind of situation that has been created by the Taft-Hartley Act where collective bargaining itself, which is supposed to be our national goal, is completely stymied by legalistic arguments, by positions taken by the general counsel of the Board, by positions taken by Federal courts and the like, and free collective bargaining is out of the window. There is no such thing any more.

Senator MURRAY. In any of your complete statements have you referred to Senate bill 249 which is before the committee?

Mr. VAN ARKEL. Well, yes, I have, Senator, but rather briefly. First, let me say that I think the bill is well drafted, that it is clear, that it represents an admirable improvement over the vague and confused and contradictory language of the Taft-Hartley Act.

As to its affirmative provisions, I think they are well drawn, and I think if they are enforced with the intent with which they are written, that they will not interfere with the legitimate activities of labor organizations.

I do say, however, that in considering labor legislation, it is well to study the exact effect that you intend, to study the exact language that you use, and then multiply by about 25 to find out what its actual effects will be in practice.

I have here a little quotation from Senator Norris, that great old statesman, when he was debating the question of the coercion-from-any-source amendment that was offered by Senator Tydings to the original Wagner Act in 1935. He went on to say that on its face the amendment seemed to be absolutely unimpeachable.

At first blush, the amendment seems to be absolutely fair, absolutely right as a proposition of logic or of justice and as applied to most of the ordinary affairs of life, there could be no objection to it—

but then he went on to say—

We cannot properly consider this question unless we consider it in the light of its history and in the light of the parties interested in the case and their power.

He talks about the Sherman antitrust law—

which was passed at a time when none of us was in the Senate. No one thought there was a labor question involved in it. The idea of the law was to protect persons in their business and prevent business from being handicapped by unjust methods of competition, but as it developed the Sherman antitrust law became a weapon by which labor was almost crushed out of existence because of the construction placed upon the law by the courts.

We passed the Clayton antitrust law, amendatory to the Sherman antitrust law. The Clayton antitrust law was passed during the official lives of some of us who are now here. That law was held by many persons to be a new charter of freedom for labor.

However, it did not do labor that much good. The constructions which were put on that law by the courts from time to time practically took away all of its force and effect.

He goes on to discuss general considerations of anti-injunction laws and talks about them, and so forth, and says:

Suppose the pending amendment were agreed to, and some laboring man should meet some other laboring man and say to him, "I should like to have you strike," or "I should like to have you join my union." What would there be to hinder one of the courts to hold that that was coercion and issuing an injunction in such a case? "You may not coerce."

I may not agree, and the Senator from Maryland would not think it was coercion, of course. We would not agree, either of us, with the construction placed by courts on the various acts that Congress had passed—

and so forth.

He goes on to point out that once you pass labor legislation you cannot recognize your own child by the time you get through with the constructions that are placed on it by the courts.

The sole reservation I have about the Thomas bill arises from that fact, that I do think that in all of labor history there is good reason to fear that any limitation which is placed on labor unions will be construed by courts or by hostile administrators and others and given an intent widely different from that which was originally intended by the Congress.

Now, I think that labor can live with the Thomas bill. If it is given bad constructions, the Congress reserves the power to change those constructions. I think labor can live with the Thomas bill. I am convinced it has not the slightest chance of living with the Taft-Hartley Act.

SENATOR MURRAY. Properly construed, do you think that the act will work out these problems that have been affecting the country and affecting business?

MR. VAN ARKEL. I think so, Senator; I think so.

SENATOR MURRAY. Are there any other questions?

SENATOR NEELY. Mr. Chairman, just one question.

MR. VAN ARKEL. I want to bring you back for a moment to the discussion that occurred between you, the able Senator from Oregon, Mr. Morse and the able Senator from Alabama, Mr. Hill, concerning the restrictions on free speech that result from exercise of certain functions or from activities under certain sections of the Taft-Hartley.

You remember that the sedition law of 1798 attempted to give to the President and the Members of Congress protection against free speech, which I think is similar to the protection that the Taft-Hartley law affords the employers of labor, and you recall that that law, of course, was limited to 2 years in its operation.

Many were indicted, and 10, you probably recall, were actually sent to prison. They were in prison as a result of having defamed the President or some Member of Congress. That is an exercise that anybody now considers a proper function for any citizen to resort to.

When Mr. Jefferson became President, he showed his contempt by immediately releasing from prison all the 10 who had been locked up because they had exercised their right to criticize either the Members of the Congress or the President. Do you remember that the sedition law was so unpopular that it almost caused a revolution? It was operated for the protection of only a handful of the Congressmen and the President. Here is a law that operates for the protection of every employer of labor in the United States in the same manner that the sedition laws, as I construe them; attempted to provide for the protection against ordinary criticism of the President and these Members of Congress.

In your opinion, was the sedition law more repugnant to the right of free speech guaranteed by the Constitution than the Taft-Hartley provisions to which Senator Morse and Senator Hill referred a while ago?

MR. VAN ARKEL. Well, Senator, I would like to answer your question this way: I think you have only stated 50 percent. The answer is: I emphatically agree to that 50 percent, but the other 50 percent, first, it gives employers a practically unlimited right, at least as it has



been construed, to vilify and attack unions and to make organization impossible. In the light of this decision this morning, however, it also operates, if this decision stands——

Senator NEELY. I have not seen it.

Mr. VAN ARKEL. To remove from labor its right of free speech, so that while conceding to employers a right of free speech which I think is not free speech at all, that is to say, it seems to me the right of workers to be free from the interference of their employers in their rights to organize in no way infringes on the free speech of the employer; Taft-Hartley, however, goes well beyond that in the respect I have just mentioned, in depriving labor effectively of the right of free speech in the most crucial section of the Taft-Hartley Act, that is, the section which is subject to the mandatory injunction, to the unlimited suit for damages, and to unfair labor practice proceedings before the Board and the secondary boycott. That means then in that section of the act where the penalties on labor are heaviest it is now clear that they do not have the protection of the right of free speech.

Senator NEELY. Just one more question. Do you agree that the laboring men and women of this country have as much right to absolute protection of the freedom of speech in criticizing their employers, as the American people have in criticizing the President of the United States and the Members of Congress.

Mr. VAN ARKEL. I had thought there was no question about it until a couple of years ago, Senator.

Senator NEELY. I did not think so either, but undoubtedly Mr. Robert Denham and some who have appeared on the other side have no patience with that sort of criticism.

Mr. VAN ARKEL. Well, I think that is self-evident. The general counsel has taken the position that all picketing is coercive, and thereby I think he would go perhaps further than the majority of the Board went in this case to say that any picketing which bothered the employer at all in any circumstances was therefore coercive and therefore at least a violation of section 8 (b) 1. Again speaking of the confusion of Taft-Hartley, Senator, the general counsel in this Klassen and Hodgson case, urged one theory, namely that all picketing is coercive. The trial examiner rejected that and he went on the ground that in the circumstances of this case the picketing was coercive.

Both the majority and the minority of the Board, in deciding this case, rejected the theories on which the trial examiner and the general counsel had urged the case so that we got a third and fourth theory now, the majority of the Board saying there is no protection for free speech in secondary boycott cases, and the minority of the Board saying that there is always free speech protection in secondary boycott cases, and that picketing itself is not inherently coercive, so that on this relatively simple case dealing with one man walking up and down with an admittedly truthful sign in a peaceful fashion in front of a building construction project, we have the spectacle of four conflicting and irreconcilable positions taken by the four persons who have dealt with the problem.

Again I point to the fact that you cannot take Taft-Hartley and clean it up. Nobody can understand it. Nobody arrives at the same conclusions.

Nobody knows what their rights are, nobody knows what the obligations are, and unless the thing is wiped off the books, nobody is going to know what his rights in this country are at all.

Senator NEELY. It has been an instrumentality of confusion and war, instead of one of peace, has it not?

Mr. VAN ARKEL. I am confident that is true, Senator.

Senator NEELY. That is all.

Senator MORSE. I wish to thank the Democrats for the use of their time this morning, Mr. Chairman. I thought it was only fair in view of the fact I am in such complete agreement with the main criticisms of the Taft-Hartley law brought out by Mr. Van Arkel. In those circumstances I thought it not fair to take any of the time of my colleagues on this side of the table. I have no more questions.

Senator HILL. Speaking as one Democrat I want to say that I was delighted to see the Senator have the time. He made such good use and effective use of the time.

Senator MORSE. Time will tell.

Mr. VAN ARKEL. I am particularly grateful for your coming down on a holiday this morning to hear me.

The CHAIRMAN. Thank you very much, Mr. Van Arkel. Washington's Birthday is never a holiday for the United States Senate. We have a standing order on that.

#### STATEMENT OF DAVID R. CLARKE ON BEHALF OF THE ILLINOIS MANUFACTURERS' ASSOCIATION

The CHAIRMAN. For the record, first of all let me ask if you have made a 10-minute summary of your statement.

Mr. CLARKE. The statement that I have prepared, the entire statement, can be read in 10 minutes.

The CHAIRMAN. That is all right.

Mr. CLARKE. I did not feel a summary was necessary.

The CHAIRMAN. Then for the record, Mr. Clarke, will you state your name, your address, and what you represent.

Mr. CLARKE. I am David R. Clarke of the firm of Fyffe & Clarke, 120 South La Salle Street, Chicago, Ill. I represent the Illinois Manufacturers' Association, for which my firm is general counsel.

Shall I proceed with my statement?

The CHAIRMAN. Yes, Mr. Clarke; proceed.

Mr. CLARKE. The Illinois Manufacturers' Association is an organization with more than 4,000 employer members engaged in manufacturing in Illinois.

The views of the Illinois Manufacturers' Association regarding S. 249, as amended, are these:

This bill would return employers and employees to the jeopardy of the unregulated and unrestrained labor-union monopolies that were chartered and protected and that operated so arrogantly under the Wagner Act.

The cost to the public of the consequences of the enactment of this bill will be enormous.

The public ultimately pays the cost resulting from the type of demands and activities that unrestrained labor-union monopolists make and enforce against employers and employees.

This bill for all practical purposes would carry us back to the situation that Congress recognized to be intolerable 2 years ago, and so undertook to correct it with the Taft-Hartley Act.

The amendments or changes that this bill would work in the Wagner Act as it stood 2 years ago are of little value in correcting the conditions that existed under the act.

We feel that the adoption of this bill would be equivalent to the issuance of a license by Congress to the labor-union leaders and to the National Labor Relations Board to resume their joint program to make all industry and all employees subject to the control of labor-union monopolists, without regard to the best interests of either and without regard to the public interest.

We believe that this bill as it is written should be defeated.

We believe that if this bill is not to be defeated, it should at the minimum be amended to provide the following:

1. The so-called closed-shop proviso, which authorizes employers and labor unions to combine to force unwilling employees to be labor-union members, to submit to the labor-union monopoly, should be eliminated.

The closed-shop proviso in this bill is simply a provision that employers are free to join with labor unions in agreements to force unwilling employees to belong to a labor union or else lose their jobs.

It is a strange and anomalous provision in a law that pretends to guarantee freedom.

The closed-shop proviso cannot be justified, except on the proposition that the Government approves of coercion of individual employees if that coercion furthers labor-union monopoly.

2. The majority rule provision, which compels unwilling employees to turn over all their affairs with their employer to a labor union to handle, should be modified to permit an individual employee the freedom to handle his own affairs with his own employer if he prefers to do so.

As it is now written this bill would prohibit an individual employee from dealing directly with his employer concerning his job in any case where the union has a majority.

The union has a majority in most cases today.

What freedom has a man who cannot bargain and sell his own labor, who cannot deal with his own employer concerning his own personal affairs?

Under this bill a union representing a majority of the employees in a plant is granted, by the Government, the exclusive right to bargain and sell the personal services of all the employees in that plant.

We submit that if it were proposed that the President of the United States, elected by a majority of the people, should be granted the exclusive right to bargain and sell the personal services of all the people, the proposal would be denounced by everyone in America.

Yet you would, by this bill, give to a labor union exclusive power and authority over individual American citizens that you would not think of entrusting to the President of the United States.

3. The freedom of speech of both employer and employee should be protected from abuse by the National Labor Relations Board. This bill does not do so.

We think that you all agree that everyone, even employers, should be free to think, say, and write whatever he thinks about a labor union,



or its leaders, or its practices, activities, and philosophies—or anything else.

But we know from experience that the National Labor Relations Board, unrestrained as it would be under this bill concerning rules of evidence that prevail in the courts, and empowered as it would be under this bill to make decisions regarding facts practically beyond review, even by the Supreme Court of the United States, would be tempted, as it was in the past, to use its power to coerce employers into silence; to effectively gag employer freedom of speech.

4. Employer representatives—namely, supervisors and foremen—should be made free from the requirements of this bill through which they are treated as though they were not a part of management, but a part of the group over whom they exercise the management function.

Foremen and supervisors are the essential arms and fingers of management. They are the means by which management functions in a plant.

Do not require management to submit to their foremen and supervisors being dominated by labor unions controlled by the employees those foremen and supervisors direct and supervise.

This bill as now written would require employers to submit to the domination of their foremen and supervisors by rank-and-file unions.

5. A statute of limitations, a provision against the misuse of ancient and stale charges and evidence by the National Labor Relations, should be provided.

To file a charge against an employer in January 1949, and then go back all through the years and pick out a bit here and a bit there and then weave it all together and treat it as a single related series of events, is unjust.

There should be a time limit on how long the Board can go back in building a case against an employer.

If you should throw out the safeguards of the rules of evidence in the courts, do away with the statutes of limitation, make the court prosecutor, judge, and jury, cut off the right of appeal where there is even a least bit of evidence—though the weight of the evidence is to the contrary—to support a decision on facts, and then provide the court, in its role of prosecutor, with a horde of assistants with zeal for one side, the other side would never have a chance.

Yet, that is the effect of what this bill does to our side—to industry.

Gentlemen, there is a limit to what you can do to industry without breaking its back—the back that supports all jobs in America.

6. The law should make it clear that the requirement that the parties bargain collectively in good faith shall not be used by the National Labor Relations Board to force them to make agreements or proposals they do not want to make.

There is a strong disposition on the part of Government agencies to force employers and labor unions into agreement.

The law should be made clear that employers and labor unions, both, are entirely free to agree or not to agree to what the other one of them demands, and free to make or not to make proposals or counterproposals.

Freedom to refuse to give away what another demands of you is the foundation of the institution of private ownership of property. It should be clearly protected.

7. The act should provide clearly that on review the courts shall set aside any order based upon a finding of fact that is contrary to the greater weight of the evidence, so as to protect the parties from National Labor Relations Board abuse.

Under this bill the National Labor Relations Board would have the power to base its decisions upon findings of fact clearly against the greater weight of the evidence.

Then, under this bill, if there were any evidence upon which to base such a finding, no matter how little, or how much greater the evidence the other way, the courts would be required to leave the Board's decision undisturbed.

Thus, even the Supreme Court of the United States is barred from seeing that justice is done by the National Labor Relations Board.

Certainly, it seems to us, justice demands that the courts be free to overturn a decision of the National Labor Relations Board that is absolutely and clearly contrary to the greater weight of the evidence.

This bill makes the National Labor Relations Board an institution above and outside the ideas of justice we have evolved over the centuries—a combined prosecutor, judge, and jury—free from the safeguards of the rules of evidence and free from adequate review of its decisions by any court in the land.

8. All jurisdictional and secondary boycotts should be outlawed.

It seems to us clear that it is against the public interest for labor unions to boycott and to strike against business concerns that are not involved in the dispute between the labor union and some other business concern or some other labor union, or any other dispute with anyone.

9. Labor unions should be made liable to suits for damages for their breaches of contract, as everyone else is.

What inducement is there for an employer to make a contract with a labor union if that contract is legally unenforceable?

This bill would require employers to enter into binding written contracts covering any agreement reached with a labor union, and then would leave the employer entirely unable to enforce it legally against the labor union.

Thus, for all practical purposes, the bill would require employers to be bound by collective-bargaining contracts and leave unions free to break the same contract without liability.

10. The law should require all labor union leaders to file anti-Communist affidavits, or else their unions be deprived of the benefits of the act. Communists should not be aided by the act in using labor unions as their tools to destroy the United States, as they would be by this bill in its present form.

A requirement that unions be deprived of the facilities of the National Labor Relations Board if those who run those unions refuse to file assurances that they are not using the union to destroy the Government is a very moderate requirement.

Something, in addition, would probably be an improvement; such, for example, as the outlawing from the facilities of the Board of any union that, in fact—and regardless of affidavits or statements by its officers—has officers or committeemen whose affiliations and activities prove them to favor destruction of our Government.

11. The Federal Conciliation Service should not be returned to the Department of Labor.

The best possible evidence of the undesirability of placing the Conciliation Service back under the domination of the Department of Labor is the demonstrated partiality of the Department of Labor before this committee, in its unyielding advocacy of this bill.

After all, conciliation service requires entire freedom from bias, if it is to be useful—and everyone in labor-relations work considers the Department of Labor to be simply and clearly prolabor union.

We do not ask that labor unions be shackled or injured in any way. We do ask this:

If we are to have a law favoring labor unions, let it be a law that is sufficiently reasonable so that employers can live under it; let us have a law that does not throw employers and labor unions into an even more costly cold war.

The present bill would do just that.

That is my statement, sir.

The CHAIRMAN. Thank you. Senator Morse.

Senator MORSE. No questions.

The CHAIRMAN. Senator Neely.

Senator NEELY. You are appearing, Mr. Clarke, for the Illinois Manufacturers' Association?

Mr. CLARKE. That is right.

Senator NEELY. How many members has it?

Mr. CLARKE. Something over 4,000. I would say that probably 97 or 99 percent of all those firms engaged in manufacturing in Illinois belong to that association.

Senator NEELY. Practically all of them are opposed to the closed shop.

Mr. CLARKE. I think that most all of them are opposed to the closed shop; yes, sir. There may be a few, but I do not know of them.

Senator NEELY. Nearly all or practically all accepted the principle of the open shop at the time you appeared before the Senate Labor Committee in 1939 and testified about the matter.

Mr. CLARKE. I think so; yes.

Senator NEELY. You testified to that effect?

Mr. CLARKE. Yes.

Senator NEELY. And a number of the members of the association for which you appear this morning used the labor spy-system service of the National Metal Trades Association?

Mr. CLARKE. I do not know that any member of the Illinois Manufacturers' Association used what you call the spy service of the National Metal Trades Association. Quite possibly some of them did. There has not been such a service for nearly 15 years, however, and my memory is not clear as to just who used the undercover operator's service of the National Metal Trades Association, because, as I say, there has not been such a thing for nearly 15 years.

Senator NEELY. Did you ever represent it?

Mr. CLARKE. The National Metal Trades Association, yes, I have represented them.

Senator NEELY. And what labor called its spy service before the La Follette committee.

Mr. CLARKE. I was counsel for the National Metal Trades Association when the La Follette committee was carrying on its investigation.

Senator NEELY. You did not have much sympathy for the Wagner Act, did you?



Mr. CLARKE. For the Wagner Act?

Senator NEELY. Yes.

Mr. CLARKE. No. I think this: I think that what I have heard here in the last 2 days and what I have read about these hearings all points toward the view that I have that the Wagner Act was a great mistake. It was one of those noble experiments. It was a great mistake, that you can have Taft-Hartley laws and you can have Senate bill 249. You can work yourselves to death over it, and as long as you have got the fundamental mistakes of the Wagner Act in force, you will never straighten out what you have done with the Wagner Act. I think the Wagner Act ought to be repealed.

Senator NEELY. You consider the Taft-Hartley Act a great improvement over the Wagner Act?

Mr. CLARKE. Yes, I think it is an improvement over the Wagner Act, but I think the Taft-Hartley law is an effort to make something good out of something that is inherently bad, and if you have something that is inherently bad, such as the Wagner Act, and then you try to amend it to make something good of it, as was done with the Taft-Hartley law, you are still going to have something bad. That is my observation.

Senator NEELY. The only defect in the Taft-Hartley law, so far as you are concerned, is its retention of some of the provisions of the Wagner Act.

Mr. CLARKE. No, I would not say that. There are some things about the Taft-Hartley law that I think are worse.

Senator NEELY. Worse than the Wagner Act?

Mr. CLARKE. Makes the situation worse then it was under the Wagner Act, yes.

Senator NEELY. What are those provisions?

Mr. CLARKE. Well, I think that section 10 (j) is a bad and dangerous provision, and when the Taft-Hartley Act was pending before Congress, the association I represent here exerted itself to the utmost to get section 16 (j) taken out of the act, out of the bill, and was unsuccessful in doing so.

Section 10 (j), if I may say, is the provision by which the Board can seek and get injunctions in unfair labor practice cases prior to trial of the case. I disapprove of it.

Senator NEELY. Did you think that ought to be stricken out because it provides that an injunction may be awarded against the employer as well as against the employee?

Mr. CLARKE. Yes, I think it is dangerous for both of them.

Senator NEELY. If it provided for an injunction against the employees only, you would not have objected to it, would you?

Mr. CLARKE. Yes, I would have objected to it. The objection would have been so loud on the part of labor unions, I am afraid my objection would not have been heard, but I do think it is an undesirable provision from the standpoint of both the labor union and the employer.

Senator NEELY. If it were just against the labor unions, you have no idea that your association would have sent you here to testify against it?

Mr. CLARKE. I would have asked them to, and I think they would have said "Yes."

Senator NEELY. On July 6, 1935, your association released a bulletin to its members, did it not?

Mr. CLARKE. In 1935?

Senator NEELY. Yes.

Mr. CLARKE. I think very likely.

Senator NEELY. It was a discussion of the Wagner Act and advice as to what to do about it?

Mr. CLARKE. I think very likely, Senator. I do not remember specifically, but this association issued lots of bulletins, but I am quite clear on this, that a number of bulletins were issued in that period and since concerning the Wagner Act by the Illinois Manufacturers Association.

I do not know what reference you have.

Senator NEELY. Did they not issue a bulletin on the 6th of July 1935, or about that time, accompanied by a memorandum or opinion prepared by you and your partner, Mr. Fyffe, to the effect that the Wagner Act was invalid, and in this opinion under a heading, "Procedure which employers may choose to adopt," did you not say:

Employers who wish to avoid insofar as possible the ill consequences of the Wagner Labor Act will choose to conduct themselves as follows:

1. Encourage their employees to avoid the entanglements and disappointments that may be expected to follow their reliance upon the act both because there is no advantage to them in being dominated by a union majority or a unit that may include other plants than theirs in turn dominated by some State and national union leaders, because the Wagner Labor Act will probably be held invalid by the United States Supreme Court at its term this fall.

Mr. CLARKE. I cannot state specifically that I issued that, but that was certainly my view at that time.

Senator NEELY. The day after the law was passed and before there had been any opportunity to observe its operation or the manner in which it would be administered or before its consequences could be known?

Mr. CLARKE. I believe that a great many lawyers, many of them much better lawyers than I am, I think, believed that the Wagner Act was invalid and it was not necessary to observe it. Some year or so later the Supreme Court rendered the decision that it was valid, but at the time that you speak of, I have no doubt that I issued such an opinion, because that is what I thought.

My partner, Mr. Fyffe, by the way, was not living at that time. The opinion was mine, not his.

Senator NEELY. In an opinion on the Wagner Act you prepared for your clients, the National Metal Trades Association, which, among laboring people, is generally known as a labor spy organization—

Mr. CLARKE. I beg your pardon, Senator, but I think you are misinformed on that because the National Metal Trades Association—I am general counsel for them now, as well as the Illinois Manufacturers Association—has not had any undercover men or had anything to do with any undercover work for nearly 15 years, and they are not known today, Senator, among labor union people as a spy organization, because they are not and have not been for many years. Labor union people are better advised than to think that they are.

Senator NEELY. It was at one time.

Mr. CLARKE. Fifteen years ago or so.

Senator NEELY. They furnished strikebreakers for scores of industries?

Mr. CLARKE. I have heard that, but I understand it was 20 years ago or more, yes. They engaged in strikebreaking and they engaged in the furnishing of undercover men in plants. None of that has been followed since I have been their counsel, and I have been their counsel since sometime prior to the La Follette committee hearings.

Senator NEELY. Did you not express this opinion in a memorandum you prepared:

Even as to those extraordinary cases—  
under the Wagner Act—

it is our opinion that the act is unenforceable because it is invalid both as respects its interference with the rights of employer and as respects its interference with the rights of the employees.

Mr. CLARKE. Well, that was my view and it sounds like my language. I have no doubt that I said so.

As a matter of fact, I wrote various opinions that it was invalid. I made talks to various groups of employers, and I gave them my opinion that it was invalid, and as I say, many very good lawyers, including some who were members of the Senate, believed as I did that it was invalid.

Senator NEELY. Some still believe that, I have no doubt. I think there are probably some lawyers who still believe in slavery, too, but I hope that that view is not shared by any Member of the Congress.

Mr. CLARKE. I hope you do not mean to imply that I am interested in slavery, Senator, do you?

Senator NEELY. I have not made any imputation of that kind.

Mr. CLARKE. Well, then, why bring it up in questioning me?

Senator NEELY. You consider all the Wagner Act bad?

Mr. CLARKE. Pardon me?

Senator NEELY. You consider all the Wagner Act bad?

Mr. CLARKE. Well, if the Wagner Act simply provided that there should not be interference, restraint, and coercion of employees, then I would not consider it to be bad.

I think the majority rule provision, as I have outlined in my statement, is eminently bad, and the majority rule provision is the crux, I think, and the great mistake, the inherent mistake in the whole Federal labor relations legislation picture.

Senator NEELY. You think that the Taft-Hartley law has been so vitiated by the retention of some of the provisions of the Wagner Act that even the Taft-Hartley law is unsatisfactory?

Mr. CLARKE. Oh, I think that the Wagner Act and the Taft-Hartley law both should be repealed, and I think that the Federal Government should get out of the business of trying to run labor unions and employers, because, as has been evidenced here the last few days, they have made a pretty bad job of it.

Senator NEELY. I am glad to find that you, as well as I, believe that the Taft-Hartley law should be repealed.

Mr. CLARKE. When I say the Taft-Hartley law, I mean all the Taft-Hartley law, Senator, including that part of it that used to be the Wagner Act. Do you agree that that should be repealed? If so, then you and I are in entire agreement.



Senator NEELY. No, no, I am in favor of repealing the provisions of the Wagner Act which I think you have in mind. But I am in favor of repealing the Taft-Hartley law in its entirety, and of restoring all the Wagner Act which the Taft-Hartley law annulled.

Let us see if we can go another step together. I am also in favor of the bill that the distinguished chairman of the committee here has introduced. Would you say you are in favor of that?

Mr. CLARKE. Of the bill that was introduced?

Senator NEELY. Yes.

Mr. CLARKE. No; I am not in favor of it and I would be glad to tell you why.

Senator NEELY. All right.

Mr. CLARKE. In the first place it reenacts what I consider to be the very wrong Wagner Act.

In the second place, it does not change that very wrong Wagner Act in the particulars that greatly reduce its offensiveness to my way of thinking, and then there is one thing in particular that I see in this bill that I have not heard mentioned here in the hearings that I think is particularly undesirable from the standpoint of labor unions and employers.

I think that in this bill you will find that the courts will hold that you have effectively set up a system of compulsory arbitration concerning the meaning and application of all contracts, and you would like for me to spell out how I arrive at that, I suppose, and I would be glad to do so.

Senator NEELY. I do not think it necessary to retrace the steps by which you reached that conclusion.

Mr. CLARKE. Pardon me?

Senator NEELY. I think it is sufficiently stated in the record.

Mr. CLARKE. No; I have not stated anything in the record on that subject except what I have said to you.

Senator NEELY. I say you have stated the conclusion.

Mr. CLARKE. Yes. I think that S. 249, as amended, sets up a system of compulsory arbitration that will be offensive to labor unions and employers alike, compulsory arbitration. I know that some of you do not think it is there, but it is, Senator.

Senator NEELY. You have been a corporation lawyer almost exclusively for the last 15, 20, or 30 years, have you not?

Mr. CLARKE. Well, I think I have done general practice.

Senator NEELY. Have you ever represented any labor union?

Mr. CLARKE. Never.

Senator NEELY. You have represented the employer class?

Mr. CLARKE. Oh, yes.

Senator NEELY. You have a perfect right to do that. They are entitled to counsel.

Mr. CLARKE. So far as labor relations matters are concerned, all of my work has been for employers; yes, sir.

Senator NEELY. Do you think that the employers really suffered any great injury under the operation of the Wagner Act?

Mr. CLARKE. I most certainly do.

Senator NEELY. Do you think they generally suffered financial losses under the Wagner Act?

Mr. CLARKE. Oh, I think that is such a broad question that I would be unable to answer it. I do not know whether they suffered financial

losses or not. I think so. I think they probably have, but that is a pretty hard thing to say.

Senator NEELY. Were they not more prosperous under the operation of that law? Did not the wealth of this country increase more rapidly while the Wagner Act was in effect than it had ever increased in any other comparable period in the whole history of this Nation?

Mr. CLARKE. I think it depends. In the first place, I do not think the coincidence of the Wagner Act and the period that you speak of, the period of prosperity of business, have any connection.

I think that what you call prosperity—and I have my doubts as to whether ultimately it is prosperity for business and industry—is the wartime inflationary synthetic sort of prosperity that probably would not prove to have been sound in the end.

Senator NEELY. You think the increase in wealth has nothing to do with prosperity. You think there is no relation between these terms?

Mr. CLARKE. Oh, I think an increase of wealth—I do not know whether when we complete the cycle we will have had an increase of wealth in this country or a diminution of wealth. I am inclined to think when all is said and done we are going to find out we have impoverished ourselves in this country over the last 20 years a great deal more than we have enriched ourselves.

Senator NEELY. Let us see about that. Do you know what our national wealth was in 1932—the latest year for which it is shown by the Economic Almanac, or other similar authority?

Mr. CLARKE. I do not know what those figures were.

Senator NEELY. In round numbers, \$307,000,000.

Mr. CLARKE. I do not take much stock in figures anyway.

Senator NEELY. The Wagner Act went into effect 3 years after that. It was in effect from 1935, July 5, 1935, to August 22, 1947.

According to the World Assets Audit Association, as shown by Dun and Bradstreet's Review for March 1948 our national wealth in 1946 was \$501,079,402,764, an increase of \$500,772,402,764 in 14 years—during 11 of which the Wagner Act was in effect.

Mr. CLARKE. Senator, between those two periods we mined our soil in this country to death, we mined our mines to death, we mined our oil facilities to death. I am talking about capital wealth. You are talking about some figures. I am talking about something actual, and you are talking about something that Dun and Bradstreet said.

I do not think Dun and Bradstreet know what the national wealth is, but I will tell you this: I think we took out a great deal more in this country than we put into it in the last 20 years.

Senator NEELY. You misunderstood me. The Dun's Review simply set forth what the World Assets Audit Association had ascertained and reported.

In the light of these figures, do you think that the employer of labor—the great corporations of this country were impoverished by the Wagner Act?

Mr. CLARKE. Why, in the first place I do not think there is any connection between the Wagner Act and any increase in wealth. There may have been.

Senator NEELY. Or between it and any other benefits that humanity received?

Mr. CLARKE. No. Just a minute. In the second place, it is very difficult for me, Senator, to find an increase in wealth in a country

that has been dissipating its wealth as rapidly as we have in the last 20 or 30 years, and I think ultimately we are going to find that we have dissipated wealth, our basic wealth, more rapidly than we have added to it.

Senator NEELY. You are not going to blame the Wagner Act for that.

Mr. CLARKE. I am certainly not going to blame the Wagner Act, and I do not think you ought to give the Wagner Act credit for your figures, or the International Audit Co. for the figures.

Senator NEELY. I suppose you do not think that any law Congress could pass should be given either credit or blame for the results of its operation.

Mr. CLARKE. I do not think for a minute the Congress has passed or can pass any law that will change economics, the law of economics, ultimately. I think that you cannot legislate prosperity. I think that possibly temporarily you can legislate the illusion of prosperity.

I think you probably can legislate temporary depressions, but I do not believe that you can legislate more wealth into our people or our country. I do not believe that Congress has that power, as powerful as Congress is.

Senator NEELY. You are not under the illusion that the Congress has the power to create wealth.

Mr. CLARKE. I cannot imagine a Member of Congress thinking that.

Senator NEELY. Neither can I. But I think Congress can enact good laws under which the people may become happy and prosperous, or bad laws under which they will become impoverished and unhappy. Do you doubt that?

Mr. CLARKE. No; I do not doubt that, but I say this: The Wagner Act is an oppressive law. It is not a law that guarantees anyone any freedom and liberty.

Senator NEELY. Do you know anybody, except some of your clients or this metal company, that was once in the spy and strikebreaking business, who was made unhappy by the Wagner Act or very many toiling men and women who have been made happy by the Taft-Hartley Act?

Mr. CLARKE. I do not think that anybody has been made happy by the Wagner Act.

Senator NEELY. You do not think so?

Mr. CLARKE. I do not believe many people have been made unhappy by the Taft-Hartley Act.

Senator NEELY. Evidently you have not read the last election returns.

Mr. CLARKE. Well, Senator, I do not think that the election returns have got anything to do with whether the Wagner Act is a good law or whether the Taft-Hartley Act is a bad law.

Senator NEELY. I am certain that the Taft-Hartley Act had much to do with the last elections in West Virginia. It was an issue in our State and every Congressman who defended it was defeated. The vote in West Virginia proclaimed that the Taft-Hartley law had made the toilers unhappy.

Mr. CLARKE. Well, Senator, I have noticed this: Usually men who are in the Congress are pretty alert, at least they like to be, and have ears to the ground as to what makes the people happy or unhappy, and I have no doubt the majority of the Congress when they passed the



Taft-Hartley Act thought they were going to make more people happy than unhappy.

Now, then, apparently from what you say the voters in your State thought otherwise.

Senator NEELY. You are from Illinois, are you not?

Mr. CLARKE. Yes.

Senator NEELY. They decided the same way in your State, did they not? How about Mr. Brooks and Senator Douglas?

Mr. CLARKE. Well, Mr. Brooks, I think, ran a little better than the Governor of the State. The Governor of the State did not have anything to do with the Taft-Hartley Act, so I do not know whether that was a determining factor or not.

Senator NEELY. Had the Governor of your State, like Mr. Dewey, spoken in favor of retaining at least part of that law?

Mr. CLARKE. I do not believe so. I do not think that was the issue.

Senator NEELY. You may be right. That is your territory, not mine, but I was under the impression that your Republican candidate for Governor of Illinois was in the Taft-Hartley corner.

Mr. CLARKE. I do not believe so. Nevertheless, I do not think, as I say, that the fortunes of the Members of the Congress in an election determine whether a law is or is not a good law or a bad law.

Senator NEELY. You are manifestly entitled to have that opinion.

Mr. CLARKE. All right; thank you.

Senator NEELY. That is all, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator NEELY. Just one more question. There is nothing now in the so-called Thomas bill now before the committee of which you approve?

Mr. CLARKE. Oh, I would not say that. I think the Thomas bill as a whole has what I really think is the same fault the Taft-Hartley Act had.

I think the Thomas bill is an attempt to make something palatable out of something that is so unpalatable inherently that the Thomas bill will fail, and I think that if you should pass the Thomas bill you will be back here in these hearings day after day and week after week disagreeing among yourselves and disagreeing with witnesses, and so on.

Why? Because you are trying to make something good that is inherently bad, Senator.

Senator NEELY. And you would be in favor then of the Congress abandoning all attempts to regulate relations—

Mr. CLARKE. The relations between employers and employees, yes, sir, I would by all means.

Senator NEELY. You would go back to the good old days when we had no law on that subject except the common law which held that all combinations of laboring men were unlawful conspiracies.

Mr. CLARKE. No, that is not true. Do not try to put words like that in my mouth. I think this: I think we had less trouble between employers and the labor unions before we had the Wagner Act than we have had since then.

I think that Congress has stirred up trouble between employers and labor unions and not only by the laws they passed, but by such things as these hearings.

Senator NEELY. I certainly agree so far as one law is concerned, and that is the Taft-Hartley law.

Mr. CLARKE. If you just go a step further and wipe out the Taft-Hartley law and what is its foundation, namely, the Wagner Act, you and I will be in entire agreement.

Senator NEELY. I will go the limit in striving to wipe out the Taft-Hartley law.

The CHAIRMAN. We stand in recess until 2:30.

(Whereupon, at 12:40 p. m., the committee recessed, to reconvene at 2:30 p. m. this day.)

#### AFTERNOON SESSION

The CHAIRMAN. The committee will be in order. The reporter will please put into the record the statement of Campbell, Wyant & Cannon Foundry Co.

(The statement referred to is as follows:)

#### STATEMENT OF R. L. LINDLAND, SECRETARY, CAMPBELL, WYANT & CANNON FOUNDRY CO. RE THE LABOR-MANAGEMENT RELATIONS ACT OF 1947

Under the Taft-Hartley Act man-hours lost due to unauthorized or wildcat strikes have been decreased by over 98½ percent. Under the Taft-Hartley Act the union has increased its membership by 31 percent. This is the experience at the Muskegon plants of Campbell, Wyant & Cannon Foundry Co.

At the present time your committee is considering possible revisions of the Labor Management Relations Act of 1947. We believe that this act has been a good act and has had the effect of bettering labor-management relations.

One provision of the act which, we believe, has operated to the benefit of not only our company but to the union representing our productive employees and to the employees themselves is section 301 of the act, which places the responsibility and liability of both parties to a collective-bargaining contract on the same basis. The result of our experience demonstrates that the act and particularly the section referred to has made a marked contribution to the improvement in the labor-management relations in our Muskegon plants.

Campbell, Wyant & Cannon Foundry Co. is an alloyed-iron and steel foundry, supplying alloyed-iron and steel castings to practically all of the automobile, farm-implement, and engine manufacturers. Our normal employment is approximately 4,000 employees. We have four plants at Muskegon, Mich., one at South Haven, Mich., and a subsidiary plant at Lansing, Mich.

Prior to the enactment of the Labor-Management Relations Act, we had a serious problem relating to unauthorized work stoppages of employees represented by the union, who stopped work in an effort to obtain settlement of a grievance instead of availing themselves of the grievance procedure provided for in our collective-bargaining agreement. In 1947, there was a 2 weeks' unauthorized strike at our Muskegon plants immediately following the signing of a collective-bargaining agreement. This was an unauthorized strike and so publicly acknowledged by the officials of the union.

During all of 1946 and the months in 1947 prior to the effective date of the law, an average of 24,742 man-hours each month were lost due to unauthorized work stoppages in our Muskegon plants. Since the effective date of the act, in August 1947, the average monthly man-hours lost due to unauthorized work stoppages has dropped to 333. This shows that since the act man-hours lost due to unauthorized work stoppages has decreased 98½ percent.

The provision of the act placing financial responsibility upon the union for damages because of stoppages of this kind has gone a long way to eliminate wildcat and unauthorized stoppages. We also believe that it has given union leaders more influence with their membership.

Our experience also proves that the act has not prevented the union from strengthening its position by obtaining new members. When the act went into effect, 71 percent of the employees in the bargaining unit represented were members of the union. Today the percentage of members belonging to the union has increased to 94 percent. This is an increase of 31 percent.

We are attaching a schedule showing the man-hours per ton lost each month and the union membership for the period from 1946 to date in our Muskegon plants.

We believe that the foregoing shows clearly that the act, so far as our experience is concerned, has contributed substantially toward improving relations between management and labor at our plants.

*Man-hours lost due to unauthorized work stoppages*

BEFORE LABOR-MANAGEMENT RELATIONS ACT

1946:	Hours	1947:	Hours
January.....	None	January.....	221
February.....	122	February.....	824
March.....	59	March.....	37
April.....	18, 269	April.....	19
May.....	1, 133	May.....	336
June.....	None	June.....	443, 663
July.....	None	July.....	1, 062
August.....	2, 210	August.....	247
September.....	1, 280		
October.....	446	Total prior to act.....	470, 099
November.....	31	Average per month.....	24, 742
December.....	140		

AFTER LABOR-MANAGEMENT RELATIONS ACT

1947:	Hours	1948—Continued	Hours
September.....	516	July.....	(1)
October.....	106	August.....	(1)
November.....	484	September.....	None
December.....	475	October.....	50
1948:		November.....	None
January.....	1, 026	December.....	None
February.....	413	1949:	
March.....	1, 464	January.....	53
April.....	82		
May.....	None	Total after act.....	4, 669
June.....	(1)	Average per month.....	333

<sup>1</sup> Strike following expiration of collective bargaining contract.

*Membership in union*

	Number of employees in bargaining unit	Number of union members	Percent of union members		Number of employees in bargaining unit	Number of union members	Percent of union members
1946:				1947—Continued			
April.....	2, 600	1, 560	60	September.....	3, 296	2, 472	75
May.....	2, 629	1, 719	65	October.....	3, 376	2, 430	72
June.....	2, 591	1, 601	62	November.....	3, 381	2, 299	68
July.....	2, 577	1, 631	63	December.....	3, 237	2, 395	74
August.....	2, 747	1, 671	61	1948:			
September.....	2, 779	1, 658	60	January.....	3, 028	2, 392	79
October.....	2, 862	1, 720	60	February.....	3, 290	2, 533	77
November.....	2, 868	1, 831	64	March.....	3, 251	2, 535	78
December.....	2, 984	1, 906	64	April.....	3, 118	2, 681	86
1947:				May.....	3, 122	2, 934	94
January.....	3, 077	1, 969	64	June.....	3, 186	2, 962	93
February.....	3, 322	2, 126	64	July.....	(1)		
March.....	3, 349	2, 109	63	August.....	(1)		
April.....	3, 309	2, 217	67	September.....	(1)		
May.....	3, 246	2, 239	69	October.....	2, 955	2, 482	84
June.....	3, 228	2, 259	70	November.....	3, 076	2, 583	84
July.....	3, 087	2, 276	77	December.....	2, 791	2, 623	94
August.....	3, 420	2, 428	71	1949: January.....	2, 377	2, 210	93

<sup>1</sup> No record.



The CHAIRMAN. Mr. Hunt, for the record will you state your name and your address and whom you represent, please, and then proceed.

**STATEMENT OF FRANK C. HUNT, DIRECTOR, INDUSTRIAL RELATIONS DIVISION, BRIDGEPORT-STRATFORD, CONN., PLANTS, MANNING, MAXWELL & MOORE, INC., BRIDGEPORT, CONN.**

MR. HUNT. My name is Frank C. Hunt. My business address is care of Manning, Maxwell & Moore, Inc., Bridgeport, Conn. I am in charge of the industrial-relations activities for a division of Manning, Maxwell & Moore, Inc. This division includes two plants—one at Bridgeport, Conn., and the other at Stratford, Conn. The total work force in both these plants amounts to approximately 1,200 people.

We have always felt that our employees are the company's most important asset and that our personnel policies and practices must give them the fullest opportunity for enjoying the self-respect, dignity, and importance to which all of us are entitled in our economic activities. We have long felt that our employees should be free to choose the kind of relationship they wished to enjoy with their fellow workers and with the company.

Approximately 5½ years ago the majority of our employees chose to join a union, and we have negotiated collective-bargaining agreements with Local 210 of the United Electrical and Radio Workers Union since that time.

**RECORD OF HARMONIOUS RELATIONSHIPS WITH EMPLOYEES**

I am glad to state that we have had the good fortune to enjoy friendly and cooperative relationships with our employees, many of whom are skilled craftsmen. During this period of time we have continued to strive toward the goal of an ever better understanding with them. I am glad to say that there has been no strike or any serious interruption of production in that period of time.

I should like to make it clear at this point that we have extended the full hand of cooperation to our union and they in turn have worked with us. It is this mutual willingness—the common desire of both labor and management to work together—which I believe is at the core of our present relationship.

All of this is good. It serves the best interests of our employees, of the company, of our stockholders and, equally important, has made it possible for us to put more and better goods at lower prices into the hands of more and more people. We want very much to continue this present mutually friendly and satisfactory relationship. We want that so much that I have come here to tell you some of the factors that brought this situation about and how I believe it can be preserved, not only in my company, but in hundreds and thousands of similar medium-sized companies throughout the country.

**EFFECT OF WAGNER ACT IN PLANT EXPERIENCE**

To go back to the 12-year period when the Wagner Act represented the national labor policy of this country, it is important to emphasize

that under it the employers were always guilty but the unions could do no wrong. In spite of this, we have enjoyed excellent labor relations.

It was our feeling that the Wagner Act existed not as an aid to promote and foster good industrial relations at the local, plant, and company levels but that is presumed that employers in general did not consider the well-being and aspirations of their employees. This is definitely not the case and never has been.

As a result of our earnest effort toward fair dealing, we have so far been successful in avoiding any contact with the NLRB either under the Wagner Act or more recently under the Labor Management Relations Act and the courts.

Prior to the present national labor policy, enacted 19 months ago, there was always the problem of protecting the stability of our relationships. As I stated at the outset, our employees were free in every sense of the word to select the manner in which they preferred to deal with management. They chose to organize. We accepted that decision in all good faith and with the full determination to make our collective-bargaining relationships serve our common interests fully. We were ready to exercise the initiative and leadership necessary to achieve the kind of mutual understanding of each other's problems and responsibilities, and of each other's rights and privileges, so that our collective-bargaining relationships and our day-to-day union-management dealings would be harmonious, stable, and enduring. This freedom which our workers enjoyed would be lost under the closed shop.

It is our belief that the Congress must always think of the individual; must always think in terms of the local unions.

In all human relations it is the individual that is important, and, equally, it is the local union that is important for industrial peace. Both the individual and the local union are of far greater importance in maintaining our great industrial strength than any policy by legislative action or administration directive, which simply pours a stream of dollars into the treasuries of the international unions.

Of course, gentlemen, you realize that I do not speak for any local union, nor would I presume to speak for any union of any kind, but I believe the facts bear out my statement. In every State in the Nation there are hundreds, if not thousands, of medium-sized and small plants.

Many of these have local unions, and in the great majority of cases industrial relations are excellent. The union and the management both try to be just and fair in their dealings with the employees and with each other.

It is obvious that what we are all striving for is that time in the future when in every case men of good will will sit down around a table, and with mutual respect and a thorough understanding of all the problems involved, will arrive at a fair and peaceful solution. It is my earnest belief the greatest single factor that will bring this day nearer is absolute equality, before the law, of the parties involved.

#### INDUSTRIAL STRIFE ENGENDERED

It was difficult to maintain peaceful and satisfactory relationships in our company while industrial conflict and strife were abroad in the land. There is no need here to recite the staggering total of strikes and man-days of work lost as it mounted year after year in the 12-year period of the Wagner Act era.

We must all remember that some of these strikes were during the war emergency. This should never have been. We had coal strikes and we had railroad strikes that seriously affected the entire national well-being.

When you consider what really happened, it is almost impossible to believe that the public—and, yes, the Government—permitted the Nation to be so completely at the mercy of some labor organizations which had grown too powerful—they thought—too mighty, too supreme for any restraint, any control, or the exercise of any responsibility.

#### PROPOSALS FOR CORRECTION ARE RESISTED

In the first half of 1947, there were 5 months of debate as to what was to be done by Congress to enact a fair and just Labor-Management Relations Act to protect the public and be sure that the employee and the employer had the same rights in the eyes of the law.

The leaders of organized labor refused point-blank to make any proposals, and yet, the Labor-Management Relations Act of 1947 was a fair and just act.

Those 5 months of debate brought to the public's attention numerous cases of outrage against the rights and freedoms of individual employees; against the health, welfare, and interests of the public, and certainly against the economic soundness of industry and business.

The debate and the publicity proved the need for a governmental framework of law and regulation that would be fair and just to both labor and management and, most important, protect the public interest and safeguard the people against industrial strife in basic industries that threatens their health and safety.

#### NEW NATIONAL LABOR POLICY HOLDS PROMISE OF IMPROVEMENT

It is history now to say that when the Labor-Management Relations Act of 1947 was enacted, it came as a long-needed reassurance of the fundamental soundness of democracy. It restored the country's faith that in a free society laws serve the function of protection to all alike, protection of the freedoms that we have fought so long and hard to maintain, protection of the rights that come from the exercise of appropriate responsibility and the assurance that justice would be even-handed and the same for all, whether it be labor or management.

Speaking for our own company, and the two plants in which I am responsible for the conduct of human relations and labor-management relations, I can say with certainty that the existence of this new national policy proved a definite, positive factor in allowing us to continue our good and cooperative relationships with our union, despite the fact—let me repeat—despite the fact that the CIO United Electrical and Radio Workers Union did not qualify under the non-Communist affidavit.

I say this because the basic provisions of the Labor-Management Relations Act are clear and implicit in assuring workers, unions, employers, and the public alike that the national labor policy and the full support of the Government are directed toward the advancement of good industrial relations, the continued improvement of effective and constructive collective-bargaining relations and the objective of industrial peace.



Summarizing the fundamental principles now embodied in the act, I am convinced that the principles I am about to mention briefly are essential to the well-being of the country.

(1) Both labor and management stand equal before the law and are held equally accountable for their actions.

It seems to us that to predicate laws on any other basis than equality is to deny and violate the very core of law itself. Therefore, this concept must be retained.

It appears to me that this matter of equality before the law covers in part many sections of the Labor-Management Relations Act of 1947.

As an example, for years corporations have had to file financial reports, surely there is no reason why the unions should not also file reports. In my opinion many of the unions should be proud of their strong financial position.

Surely if the employer must abide by the contract the union should abide by the contract. President Truman in opening the management-labor conference in 1945, made the following statement:

We shall have to find methods not only of peaceful negotiations of labor contracts, but also of insuring industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner agreed upon by the parties. If we expect confidence in agreements made there must be responsibility and integrity on both sides in carrying them out.

Surely the right of free speech covers all, not just one group.

I also believe that if it is right for the union officers to file a non-Communist affidavit, it is also absolutely right to require the same performance from management.

The requirement to bargain in good faith is an absolute necessity. Until that happy day arrives when management and labor have learned that it is the only proper way to fulfill their duty to the public, as well as to each other, it must be a matter of law.

At the shop level it is a requirement that we all, both labor and management, act in good faith in our day-to-day dealings.

(2) Both labor and management should have certain responsibilities and obligations toward each other, toward employees and toward the public.

This principle is now clearly stated in the law. In the past year and a half since the act's passage, this one principle alone has exercised a marked affirmative influence on the attitudes and conduct of both parties in their dealings with each other.

This is clearly evident in the vastly increased number of collective bargaining agreements that were negotiated to a satisfactory conclusion during the past 18 months, without work stoppages.

(3) Employees for the first time in 12 years have had restored to them their right and proper freedoms, their right to choose their affiliations, to select the method of their dealings with employers and to determine, of their own free will, whether they will or will not join, or remain a member of a union—and which union it shall be—without reprisal or penalty.

It is my belief that the closed shop or any form of compulsory union membership is not in the interest of the individual worker; it is not in the interest of many of the local unions. It should have no place and no force in the day-to-day dealings of the employee and the employer in the thousands of shops in this free country of America.

It is my earnest belief that we have reached the point where the strength and the ability of the local union leaders no longer require any compulsion of membership. In the thousands of small and medium-sized plants throughout this country, management has learned to respect the union, and the union has learned to respect management. No better basis can exist for fair dealing, industrial peace, and the public good than this mutual respect and understanding.

On November 14, 1941, the late President Roosevelt said:

I tell you frankly that the Government of the United States will not order, nor will Congress pass legislation ordering a so-called closed shop. The Government will never compel this 5 percent (of nonunion coal miners) to join the union (United Mine Workers) by a Government decree. That would be too much like the Hitler methods toward labor.

(4) The anti-Communist affidavit is a protection against traitors.

Communists, whose primary objective is to destroy our form of government, should be eliminated from all positions of trust or power, whether these positions be in labor, management, or politics.

(5) The guaranty of freedom of speech is the alternative of communism.

Free speech is a fundamental principle of American life and this freedom must be preserved for all—employers, employees, and the public alike.

It is my belief that employers today are glad to use this freedom to seek for a better understanding and a better cooperation for all their employees, regardless of union affiliations.

(6) Mass picketing, violence, and intimidation are defined as unfair labor practices.

The records are full of examples of assault, physical violence, destruction of property, and even loss of life under the Wagner Act, because there was no adequate restraint under it to control the element of mob violence in certain labor unions.

In a free society there can be no justification for excesses and abuses by any one group—labor, management, or any other interest—against the safety and security of any person or persons.

(7) If industrial warfare or a national emergency threatens or endangers the public health and safety, the public must be protected.

The right of the Government to halt industry-wide or national strikes which critically affect the national health and safety cannot be a matter of debate.

Despite the administration's present refusal to endorse this principle, we cannot afford to forget that the President had recourse to the remedy now incorporated in the L. M. R. A. when seven national emergency disputes threatened to bring our entire economy to its knees. Is this not in itself overwhelming evidence of the need for such protection to the public when emergencies imperil the national health and safety?

The principle embodied in this provision cannot be rejected if our national labor policy is worthy of its name.

(8) The provision of injunction as a remedy in the event of jurisdiction or secondary boycotts is a necessary safeguard if the right of people to work, when they have no dispute with management, is to be protected.

The value of this principle as a powerful preventive has proved itself many times over in the past 18 months. Where is proof that the era of government by injunction is revived by the law? Management would be the last to wish that. The fact is that the injunction has been rarely used and then only in a handful of instances.

(9) Restrictions have been placed upon jurisdictional disputes.

The amazing picture of jurisdictional disputes in the building and construction industry, which for years have caused untold hardship to workers involved and to the Nation as a whole, now being settled without strikes, is one that proves beyond any doubt what sound laws can do.

We cannot afford to discard the principle underlying this provision.

(10) Abuse of the right to strike is restricted in the public interest.

Can there be any justification for strikes which would compel the employer to violate the law? Can there be any excuse for strikes that would subject an employer to unfair labor practice charges or criminal liabilities?

I believe that the restrictions now covering this point cannot be thrown away. They must be retained.

(11) It is vital that employers be free of any legal obligation to bargain with their own management.

On behalf of the thousands of small and medium-sized companies in this country, I believe it is imperative that the management structure be free of conflict of interest. There cannot be a division of responsibility. A strong, sound management that operates a profitable company is labor's best guaranty of good wages and good working conditions.

Any type of unionization of supervision would appear to be disastrous for the small and medium-sized companies. In the large companies there may be thousands of foremen, but in the type of company I am talking about there may be 2 or perhaps 40 or 50. They are management's men. They must see to it that the departments they operate are operated at a profit. These management men must be fair, they must be just, they must know their business, but they must help the company in its endeavor to be a good strong company that can afford to pay good wages, that can afford to pay a dividend, that can afford to improve working conditions, can afford to expand and make more jobs, and can continue to give the public a good or a better article at the same or a lower price. In the medium-sized companies these men know almost from day to day many of the over-all problems, they are really and truly management.

It is my earnest belief that if the unionization of foremen is permitted it would be contrary to public interest. In the last analysis I believe it would mean another layer of management such as general foremen, and to these general foremen the management would look for performance and the foremen would simply be another group in a small, different type of union. This would definitely increase the cost of doing business, and so increase the price of the product.

May I repeat, that management's first obligation is to operate a profitable company so that the company can pay good wages and maintain good working conditions.

(12) Fair and impartial administration of the law is preeminently necessary.



I have purposely kept this point to the last because I feel that it expresses the very cornerstone on which any labor legislation must rest. Confidence by both labor, management, and the public in the ability and fairness of the administration of our labor laws by the Government agencies charged with the responsibility and authority to fulfill the objectives of the law is vital to the long-range success of such legislation.

Under the Wagner Act, a charge of unfair labor practice was tantamount in the eyes of the National Labor Relations Board to conviction. Under this one-sided administration, abuses grew up that were fundamentally bad.

The principles of impartiality and even-handed administration apply as well to the United States Mediation and Conciliation Service. I believe that this agency must remain independent and separate from the United States Department of Labor. Only by remaining a strong and impartial body, free of any control by outside forces, can it make its full contribution to national industrial peace.

#### THE ISSUES INVOLVED

Any consideration of labor legislation at this point in our national history cannot be made without giving full recognition to some rather startling facts, namely: The phenomenal gains that unions have made during the period that the L. M. R. A. has been on the statute books. Contrary to their charge that unions would be undermined and destroyed, the facts show that their membership has increased to a new peak of 16,210,000 in 1948, according to the United States Department of Labor. Through peaceful negotiations in that same period, the wages of industrial employees have increased either in average hourly earnings or in over-all take-home pay. Improved working conditions and increased benefits of every kind have accrued to an increasing number of industrial employees.

The Nation has enjoyed far greater industrial peace than in any time in its history since the Wagner Act. The deepening sense of responsibility accepted by both labor organizations and employers within the framework of the present law has begun to show beneficial results which hold forth the promise of a new era of good will, mutual respect, and a greater degree of industrial peace than this country has ever seen.

Are these benefits signs of hardships inflicted upon the unions? Are they evidence of actions by employers to undermine their proper functions and importance? Can these undeniably healthy developments be construed as anything other than signposts for greater progress toward better labor-management relations in the future? On the contrary. They form an ever-growing body of evidence of the affirmative fact that the present national labor policy as incorporated in the Labor-Management Relations Act of 1947 is a law that advances the interests of all alike—workers, unions, the public, and employers.

#### CONCLUSION

Any prospect of radical reversal in our present labor policy is a cause for the gravest concern. If Congress attaches any value whatsoever to the essentiality of a cooperative and a friendly relationship

between labor and management, if Congress is seeking the public good and its protection against the costly and disastrous effects of industrial warfare, if Congress is concerned with the basic rights and freedoms of individuals; then the Congress must in fairness and justice to all retain the foregoing principles.

With the retention and reinforcement of the fundamental principles essential to the cultivation of better employer-employee relationships in the plant and the improvement of collective bargaining as a constructive force for labor-management teamwork, I am confident that employers, with the utmost sincerity, will exercise the initiative and constructive leadership for the development of an increasingly cooperative and friendly relationship with their employees and unions.

I for one, as representing a medium-sized company, feel that this will not be possible unless the basic provisions of the Labor-Management Relations Act are retained. If they are retained, as they must be, then I can say that we look forward with high hopes to a period of deepening cooperation and teamwork between labor and management that will go far to help this country along the road to increased prosperity and a higher standard of living for all.

Mr. Chairman, may I add one paragraph, sir, that is not written?

The CHAIRMAN. Yes.

Mr. HUNT. I listened here yesterday, sir, and this morning, and I want to assure you and all the gentlemen here that many technical questions came up that I could not possibly answer. My whole thinking is on the basis of the shop level and what is good at the shop level, which I believe in the last analysis must be good for the public and for the great majority of the workers, and the technical questions, sir, with regard to various points that have come up, I simply would not pretend to have the answers. They are far too technical for me to answer.

The CHAIRMAN. Senator Donnell.

Senator DONNELL. Thank you, Mr. Chairman.

Mr. Hunt, I was a minute or two and possibly a little more than that late in getting in and I didn't hear the opening of your statement. Did you tell us what the nature of your business which is operated by your company is?

Mr. HUNT. No consumer goods. They have valves and gages and recording instruments for ships, public utilities, high-octane gas program, dairies, and all types of plants that might use our product.

Senator DONNELL. I understand from your statement that the total work force in both of your plants amounts to approximately 1,200 people.

Mr. HUNT. That is correct, sir.

Senator DONNELL. And both of your plants are in Connecticut?

Mr. HUNT. The Manning, Maxwell & Moore Co. has other plants, but these are the two plants with which I am familiar.

Senator DONNELL. How long have you been with the company?

Mr. HUNT. Six years.

Senator DONNELL. You refer to it in your testimony as a medium-sized company. Will you tell us, please, what you mean by that?

Mr. HUNT. In the Bridgeport works there are approximately 750 employees. In the Stratford works there are approximately 500 employees, give or minus 40 or 50, and we believe, sir, that those plants are what you would call medium-sized plants.

Senator DONNELL. What is the size of the company in its entirety, referring now to its plants in various other parts of the country, if it has other plants?

Mr. HUNT. I hesitate to give you these figures, sir, because some of these plants I have absolutely nothing to do with. They are run on a divisional basis, but I can give you an estimate.

Senator DONNELL. Very well.

Mr. HUNT. I would say that in Muskegon, Mich., there are approximately 700 employees; at Watertown, Mass., I would say there were approximately 500 employees; at Tulsa, Okla., I would say there were approximately 150 employees; and in the Jersey City plant I would say there were approximately 50 employees; making a total of 2,600.

Senator DONNELL. Now, Mr. Hunt, you referred to the anti-Communist affidavit.

Mr. HUNT. Yes, sir.

Senator DONNELL. As I understand it, you are of the opinion that it is a protection against traitors. You so state in your statement.

Mr. HUNT. Yes, sir.

Senator DONNELL. I wanted to ask you what you have to say about that argument that has been presented by some as against the practicability of the anti-Communist affidavit.

I think I quote them substantially correctly in saying that the point has been made that a Communist, in the first place, cannot be believed, that he is not particularly careful with the truth, that, therefore, the anti-Communist affidavit has no assurance of the verity of such affidavit and, therefore, the provision of the law making it obligatory on the officers of these labor unions to sign and swear to anti-Communist affidavits is valueless because you can't believe the truthfulness of the affidavits after they have been signed.

Now, I wanted to ask you about that and also as to whether you think that even though the Communists can not, generally speaking, be believed, do you think that the very fact that there is a punishment in the nature of a punishment for perjury, which would be inflicted upon a person making such an affidavit falsely may act and does act as a deterrent against the making of such false affidavits?

Mr. HUNT. I don't know, sir. May I answer that another way? This may not answer your question, but this is what I personally feel:

If anything like this is in the law for one side of the picture, it ought to be in the law for the other side or throw it out.

Senator DONNELL. I agree, it should be mutual, but that wasn't the point I had in mind. Here is a man saying, "I don't believe the Communist affidavit has any place in this law because you can't believe the affidavit after it is signed."

I wanted to ask you in that connection, even though it be true that, generally speaking, the Communists cannot be relied on to tell the truth, do you think or do you not think they would be very hesitant about making a false affidavit in many instances because they would be afraid of punishment and even though the man who signs it may not be truthful, there may be some real value in securing his affidavit because there may be a fear of punishment? Do you get the point in my mind?



Mr. HUNT. I get the point, sir.

Senator DONNELL. What do you have to say on that question?

Mr. HUNT. I feel that if the Communists wanted to sign a paper like that, they wouldn't hesitate to do it, whether it be true or not.

Senator DONNELL. That still isn't my point. The point is that whether you think, even though he wouldn't, as a matter of morals, hesitate to sign it, whether true or not, is it or is it not true that he would be deterred from signing an affidavit because he fears that he might have to go to jail if he told a lie in the affidavit?

Mr. HUNT. I presume that is correct. I should think without question it might deter some of the members from doing that.

Senator DONNELL. Perhaps it may be true that a thief is sometimes deterred from stealing because he is afraid he may have to go to the penitentiary. Do you agree with that?

Mr. HUNT. I presume so.

Senator DONNELL. May it also be true and do you think it is true that in the case of Communists, even though a Communist be untruthful, he wouldn't want to go to the penitentiary and, therefore, would not falsify the affidavit?

Mr. HUNT. I think that is correct; yes, sir.

Senator DONNELL. Now, Mr. Hunt, in regard to the national emergencies, on page 7 of your statement—and, by the way, Mr. Chairman, at this point may I respectfully urge that both the original statement and the revisions and additions of Mr. Hunt be incorporated in full in the record?

The CHAIRMAN. Without objection, it is so ordered.

Senator DONNELL. On page 9 of your statement you refer to national emergencies and you say that seven national emergency disputes threatened to bring our entire economy to its knees.

At the time that the report of the Joint Committee on Labor-Management was filed in the Senate on December 31, 1948, there had been six instances of that type which were reported at pages 27 and 28 of the report. I am wondering if you have at your hand material that would enable you to know what the seven are to which you referred.

Mr. HUNT. No, sir. I should have corrected that. I understand there were only five.

Senator DONNELL. There were six listed on pages 27 and 28. They were: *U. S. v. Carbide and Carbon Chemicals Corporation et al.*; *U. S. v. International Union, United Mine Workers of America et al.*; *U. S. v. International Longshoremen's Association*; *U. S. v. ILWU, Waterfront Employers Association of the Pacific Coast, Pacific-American Shipowners Association et al.*; *U. S. v. National Maritime Union et al.*; *U. S. v. National Maritime Union et al.* The first case of *U. S. v. National Maritime Union* was for the east coast and the second was for the Great Lakes.

That makes six. You should have corrected, you say, this figure to a lower figure?

Mr. HUNT. Yes, sir.

Senator DONNELL. Very well. Have you heard anything about a Nation-wide strike that has been in progress in Italy and, I think, according to the radio today, some action has been taken toward settling the case; do you know anything about that?

Mr. HUNT. I simply saw a headline.

Senator DONNELL. You did see a headline referring to a Nation-wide strike?

Mr. HUNT. A controversy, a serious disorder over there.

Senator DONNELL. So at least in some country, whether our own or not, this thing of a national strike apparently hasn't just been wiped off the boards even yet. Do you concur with that view?

Mr. HUNT. Yes, sir.

Senator DONNELL. And it hasn't been so long since in 1948, May of 1948, certain of the railroad employees were threatening a strike, and although the operation of the railroads was taken over by the Secretary of the Army, pursuant to an executive order of the President and a call was issued by the President to the railroad workers to cooperate with the Government by remaining on duty, a strike was threatened. That is correct, is it not? Do you remember that?

Mr. HUNT. I think so.

Senator DONNELL. And do you recall that the strike was not called off until a temporary order was issued by the United States District Court for the District of Columbia?

Mr. HUNT. I heard that here the other day, sir, which refreshed my memory.

Senator DONNELL. Do you remember also in 1946, 2 years before, there was a strike of certain employees of railroads which tied up the railroads of this entire Nation substantially for two solid days? Do you remember that of your own recollection?

Mr. HUNT. Yes, sir.

Senator DONNELL. Now, Mr. Hunt, do you favor a provision such as exists in the Taft-Hartley law for the President in the event of a national emergency imperiling the national health or safety, to come in and direct his Attorney General to petition the United States district court to issue an injunction and do you favor granting the court the right to issue an injunction enjoining any such strike or the continuing thereof, and to make such other orders as may be appropriate? Do you favor that?

Mr. HUNT. Mr. Senator, may I bring that down to a local level and try to answer it the way I would look at it?

Senator DONNELL. That would be all right. I am wondering if you are going to refer to a Nation-wide strike when you talk about the local level.

Mr. HUNT. I think I can make the parallel.

Senator DONNELL. Would you mind telling us before you make the parallel, in the event that what the President referred to here in his utterance as a Nation-wide tragedy with world-wide repercussions, namely, the strike on the railroads to which he was referring as being shortly in prospect, in the event of such a situation developing, do you think or do you not think it advisable that a court shall have the right to issue an injunction to stop it?

Mr. HUNT. Sir, whether a court should have the right or not I do not know. I feel this way: That some power—the President, I think it was Senator Humphrey who suggested it might be the solution or inferred, at least, that the President would call a special session of Congress in case of a national emergency. That may be the answer. I do not know, sir.

Senator DONNELL. You would favor, I take it, when you used the words "some power," you would favor the idea of some power residing in somebody to prevent such Nation-wide disaster as the President referred to; is that right?

Mr. HUNT. No, I mean this, sir: That if by law there is no such power anywhere, then it seems to me, sir, that in case of a national emergency the President and the Congress together should act. Whether that means calling a special session of Congress, I don't know, sir, but I do feel that the national emergency—and when I say national emergency that is just what I mean—that there has got to be some solution.

Senator DONNELL. In other words, you don't favor allowing this country just to be brought into a Nation-wide tragedy with world-wide repercussions because management, on the one side, and labor, on the other side, can't agree. Am I correct in my statement?

Mr. HUNT. A plague on both their houses. I think something should be done and they ought to be made to get together.

Senator DONNELL. You do agree with me that the interest of the public ought not be disregarded simply because management can't agree; am I correct?

Mr. HUNT. The public should come first.

Senator DONNELL. Mr. Hunt, in the matter of mediation and conciliation, are you familiar with the Mediation and Conciliation Service of the United States?

Mr. HUNT. No, sir; not to the extent that we would have been under other circumstances because we never had to call it in.

Senator DONNELL. You never had to call it in?

Mr. HUNT. No, sir.

Senator DONNELL. Are you prepared to answer this type of question then? If you would prefer not, all well and good. If you prefer to, all well and good.

Suppose we have a Mediation and Conciliation Service which is concerned with mediating and conciliating employers, on the one hand and employees on the other.

Would you favor having that Mediation Service as an independent agency not in either the Department of Labor or the Department of Commerce, or would you favor having it in the Department of Labor?

Mr. HUNT. Senator, it would appear to me, sir, that it is a court of a kind and that it should be absolutely free from all connections with anything. It should be absolutely alone. It should have the dignity of the highest court in the land.

Senator DONNELL. It is not a court.

Mr. HUNT. I know it, but it is a type of court, sir.

Senator DONNELL. I would not agree that it is a type of court. It is an agency, as I understand it—I am not an expert on this either, but if you were to try to mediate the trouble of Senator Neely as an employer and me as an employee, you would say to Senator Neely, "You ought to give," and you would say to me that I ought to give, or perhaps we should use the illustration of Mr. Denham and Mr. Neely.

Senator NEELY. It would be a better illustration if you would cast yourself as the employer and me as the employee.

Senator DONNELL. At any rate, what I am getting at is: If there is difficulty between an employer of labor, we will say your company with



2,500 employees, and it can't agree with its employees on the wage rates that are to be paid, and you decide to go over to a mediator or a conciliator who is going to sit down with both sides and see what he can do; not issue orders but talk it over with both sides and see if they can work out something; would you think it is better to have that Mediation and Conciliation Service independent of either one of you, or would you want it over here in the Department of Labor at Washington, D. C.?

Mr. HUNT. I think it should be independent, sir.

Senator DONNELL. Thank you, that is all, Mr. Chairman.

The CHAIRMAN. Senator Morse.

Senator MORSE. No questions.

The CHAIRMAN. Senator Murray.

Senator MURRAY. Mr. Chairman, in the interest of conserving time, I think we won't ask any questions at this time. We are getting crowded here now.

Senator MORSE. You gentlemen are getting crowded?

Senator MURRAY. Yes, we are. We gave you so much time and yielded to you so much, we are getting a little behind here.

Senator MORSE. That was very kind of you.

Senator DONNELL. I notice by the radio that Secretary Tobin—

Senator HILL. Whose time is this on?

Senator DONNELL. This is on our time.

Secretary Tobin mentioned that the time for this hearing had been extended because the Democrats always want to hear all sides of every question, or words to that effect.

I want to say that I do not agree with that statement. I don't think that is at all in accordance with the facts of this committee. I don't mean any reflection on the Democrats, but I mean that the extension here, as I see it, was at the urgent request and suggestion of the Republicans and doubtless was secured, at least in part, because of widespread public complaint that these hearings should not be hurried through without some semblance of adequate time for hearing.

Senator MURRAY. The Senator from Missouri cannot deny, though, that we have yielded to them and assisted them in every way by reason of not taking up time ourselves and giving them an opportunity on our time to ask questions and interpose statements all through the hearings.

Senator MORSE. Divided the time-equally, too.

Senator MURRAY. Yes.

Senator HILL. The Senator from Missouri was not here this morning. I understand he was down making a speech at a Washington celebration. I think, really, we yielded more time to the Senator from Oregon than we consumed ourselves, and he used the time well.

Senator NEELY. Yes; he used the time wisely and well.

Senator DONNELL. I appreciate the generosity of my friends.

Senator MORSE. I used the time to ask their questions.

Senator DONNELL. I still insist that I think these hearings are being rushed in a way that is not consonant with the best public interest, and although we agreed the other day as a matter of compromise to conclude on February 23, I have no doubt that there are many industries, many persons that should be heard and that I personally

should like to have heard, and I should like to see these hearings extended for at least 2 weeks further.

Senator NEELY. Senator Morse was engaged in conversation. I do not think he heard my part of the comment, which is wholly unimportant, except that I referred to the great Senator from Oregon, and my statement was that the time which was yielded to him had been used wisely and well and, as usual, in a humanitarian manner.

Senator MORSE. I will order another steak dinner.

Senator DONNELL. I would suggest that Mr. Denham be allowed to come for a good visit with Senator Neely.

Senator NEELY. I prefer to choose my own company.

Mr. HUNT, in the next to the last paragraph of your written statement you say:

I am confident that employers with the utmost sincerity will exercise the initiative and constructive leadership for the development of an increasingly cooperative and friendly relationship with their employees and unions. I, for one, feel that this will not be possible unless the basic provisions of the Labor-Management Relations Act are retained.

If they are retained, as they must be, then I can say that we look forward with high hopes to a period of deepening cooperation and teamwork between labor and management that will go far to help this country along the road to increased prosperity and a higher standard of living for all.

At an earlier point in your paper you also say that the plants you represent are organized and belong to the Electrical and Radio Workers Union, and that their continued membership is 1,200; is that correct?

Mr. HUNT. The two plants I am familiar with have 1,200.

Senator NEELY. Twelve hundred?

Mr. HUNT. Yes, sir; in the two plants.

Senator NEELY. In your opinion, what percentage of these 1,200 employees would concur in your statement that I have just read in regard to the necessity and desirability of retaining the Taft-Hartley law, or at least its fundamental principles?

Mr. HUNT. The basic provisions are what we are talking about.

Senator NEELY. Yes, sir.

Mr. HUNT. I don't know.

Senator DONNELL. What was the answer?

Mr. HUNT. I don't know. He asked me how many of our employees would agree with that statement. I haven't any idea, Senator.

Senator NEELY. You haven't any idea that any very considerable number of them would, have you?

Mr. HUNT. No.

Senator NEELY. Are you not aware of the fact that this union to which you refer has gone on record through the press and by means of resolutions, as favoring the total repeal of the Taft-Hartley Act?

Mr. HUNT. Yes, sir; I presume so.

Senator NEELY. Have you any reason to doubt that these 1,200 employees share the opinion expressed on this subject by the union to which they belong, on that subject?

Mr. HUNT. I should think they would, without question.

Senator NEELY. That is all.

The CHAIRMAN. Thank you, Mr. Hunt.

(Mr. Hunt submitted the following statement:)

STATEMENT OF FRANK C. HUNT, DIRECTOR, INDUSTRIAL RELATIONS DIVISION, BRIDGEPORT-STRATFORD, CONN., PLANTS, MANNING, MAXWELL & MOORE, INC., BRIDGEPORT, CONN., TO THE COMMITTEE ON LABOR AND PUBLIC WELFARE OF THE UNITED STATES CONGRESS

My name is Frank C. Hunt, and I am in charge of the industrial-relations activities for a division of Manning, Maxwell & Moore, Inc. This division includes two plants—one at Bridgeport, Conn., and the other at Stratford, Conn. The total work force in both these plants amounts to approximately 1,200 people.

We have always felt that our employees are the company's most important asset and that our personnel policies and practices must give them the fullest opportunity for enjoying the self-respect, dignity, and importance to which all of us are entitled in our economic activities. We have long felt that our employees should be free to choose the kind of relationship they wished to enjoy with their fellow workers and with the company.

Approximately 5½ years ago the majority of our employees chose to join a union, and we have negotiated collective-bargaining agreements with local 210 of the United Electrical and Radio Workers Union since that time.

#### RECORD OF HARMONIOUS RELATIONSHIPS WITH EMPLOYEES

I am glad to state that we have had the good fortune to enjoy friendly and cooperative relationships with our employees, many of whom are skilled craftsmen. During this period of time we have continued to strive toward the goal of an ever better understanding with them. I am glad to say that there has been no strike or any serious interruption of production in that period of time.

I should like to make it clear at this point that we have extended the full hand of cooperation to our union and they in turn have worked with us. It is this mutual willingness—the common desire of both labor and management to work together—which I believe is at the core of our present relationship.

All of this is good. It serves the best interests of our employees, of the company, of our stockholders, and, equally important, has made it possible for us to put more and better goods at lower prices into the hands of more and more people. We want very much to continue this present mutually friendly and satisfactory relationship. We want that so much that I have come here to tell you some of the factors that brought this situation about and how I believe it can be preserved, not only in my company, but in hundreds and thousands of similar medium-sized companies throughout the country.

#### EFFECT OF WAGNER ACT IN PLANT EXPERIENCE

To go back to the 12-year period when the Wagner Act represented the national labor policy of this country, it is important to emphasize that under it the employers were always guilty but the unions could do no wrong. In spite of this, we have enjoyed excellent labor relations.

It was our feeling that the Wagner Act existed not as an aid to promote and foster good industrial relations at the local, plant, and company level but that it presumed that employers in general did not consider the well-being and aspirations of their employees. This is definitely not the case and never has been.

As a result of our earnest effort toward fair dealing, we have so far been successful in avoiding any contact with the NLRB either under the Wagner Act or more recently under the Labor-Management Relations Act, and the courts.

Prior to the present national labor policy, enacted 19 months ago, there was always the problem of protecting the stability of our relationships. As I stated at the outset, our employees were free in every sense of the word to select the manner in which they preferred to deal with management. They chose to organize. We accepted that decision in all good faith and with the full determination to make our collective-bargaining relationships serve our common interests fully. We were ready to exercise the initiative and leadership necessary to achieve the kind of mutual understanding of each other's problems and responsibilities, and of each other's rights and privileges, so that our collective bargaining relationships and our day-to-day union-management dealings would



be harmonious, stable, and enduring. This freedom which our workers enjoyed would be lost under the closed shop.

It is our belief that the Congress must always think of the individual; must always think in terms of the local unions.

In all human relations, it is the individual that is important, and, equally, it is the local union that is important for industrial peace. Both the individual and the local union are of far greater importance in maintaining our great industrial strength than any policy by legislative action or administration directive, which simply pours a stream of dollars into the treasuries of the international unions.

#### INDUSTRIAL STRIFE ENGENDERED

It was difficult to maintain peaceful and satisfactory relationships in our company while industrial conflict and strife were abroad in the land. There is no need here to recite the staggering total of strikes and man-days of work lost as it mounted year after year in the 12-year period of the Wagner Act era.

We must all remember that some of these strikes were during the war emergency. This should never have been. We had coal strikes and we had railroad strikes that seriously affected the entire national well-being.

When you consider what really happened, it is almost impossible to believe that the public—and, yes; the Government—permitted the Nation to be so completely at the mercy of some labor organizations which had grown too powerful (they thought), too mighty, too supreme for any restraint, any control, or the exercise of any responsibility.

#### PROPOSALS FOR CORRECTION ARE RESISTED

In the first half of 1947, there were 5 months of debate as to what was to be done by Congress to enact a fair and just labor-management relations act to protect the public and be sure that the employee and the employer had the same rights in the eyes of the law.

The leaders of organized labor refused point-blank to make any proposals, and yet, the Labor-Management Relations Act of 1947 was a fair and just act.

Those 5 months of debate brought to the public's attention numerous cases of outrage against the rights and freedoms of individual employees; against the health, welfare, and interests of the public; and certainly against the economic soundness of industry and business.

The debate and the publicity proved the need for a governmental framework of law and regulation that would be fair and just to both labor and management and, most important, protect the public interest and safeguard the people against industrial strife in basic industries that threatens their health and safety.

#### NEW NATIONAL LABOR POLICY HOLDS PROMISE OF IMPROVEMENT

It is history now to say that when the Labor-Management Relations Act of 1947 was enacted, it came as a long-needed reassurance of the fundamental soundness of democracy. It restored the country's faith that in a free society laws serve the function of protection to all alike, protection of the freedoms that we have fought so long and hard to maintain, protection of the rights that come from the exercise of appropriate responsibility and the assurance that justice would be even-handed and the same for all, whether it be labor or management.

Speaking for our own company, and the two plants in which I am responsible for the conduct of human relations and labor-management relations, I can say with certainty that the existence of this new national policy proved a definite, positive factor in allowing us to continue our good and cooperative relationships with our union, despite the fact—let me repeat—despite the fact that the CIO United Electrical and Radio Workers Union did not qualify under the non-Communist affidavit.

I say this because the basic provisions of the Labor-Management Relations Act are clear and implicit in assuring workers, unions, employers, and the public alike that the national labor policy and the full support of the Government are directed toward the advancement of good industrial relations, the continued improvement of effective and constructive collective bargaining relations and the objective of industrial peace.

Summarizing the fundamental principles now embodied in the act, I am convinced that the principles I am about to mention briefly are essential to the well-being of the country.

(1) *Both labor and management stand equal before the law and are held equally accountable for their actions.*—To predicate laws on any other basis than equality is to deny and violate the very core of law itself. Therefore, this concept must be retained.

(2) *Both labor and management should have certain responsibilities and obligations toward each other, toward employees and toward the public.*—This principle is now clearly stated in the law. In the past year and half since the act's passage, this one principle alone has exercised a marked affirmative influence on the attitudes and conduct of both parties in their dealings with each other.

This is clearly evident in the vastly increased number of collective bargaining agreements that were negotiated to a satisfactory conclusion during the past 18 months, without work stoppages.

(3) *Employees for the first time in 12 years have had restored to them their right and proper freedoms, their right to choose their affiliations, to select the method of their dealings with employers and to determine, of their own free will, whether they will or will not join, or remain a member of, a union—and which union it shall be—without reprisal or penalty.*—It is my belief that the closed shop or any form of compulsory union membership is not in the interest of the individual worker; it is not in the interest of many of the local unions. It should have no place and no force in the day-to-day dealings of the employee and the employer in the thousands of shops in this free country of America.

(4) *The anti-Communist affidavit is a protection against traitors.*—Communists, whose primary objective is to destroy our form of government, should be eliminated from all positions of trust or power, whether these positions be in labor, management, or politics.

(5) *The guaranty of freedom of speech is the alternative of communism.*—Free speech is a fundamental principle of American life and this freedom must be preserved for all—employers, employees, and the public alike.

It is my belief that employers today are glad to use this freedom to seek for a better understanding and a better cooperation for all their employees, regardless of union affiliations.

(6) *Mass picketing, violence, and intimidation are defined as unfair labor practices.*—The records are full of examples of assault, physical violence, destruction of property, and even loss of life under the Wagner Act, because there was no adequate restraint under it to control the element of mob violence in certain labor unions.

In a free society there can be no justification for excesses and abuses by any one group—labor, management, or any other interest—against the safety and security of any person or persons.

(7) *If industrial warfare or a national emergency threatens or endangers the public health and safety, the public must be protected.*—The right of the Government to halt industrywide or national strikes which critically affect the national health and safety cannot be a matter of debate.

Despite the administration's present refusal to endorse this principle, we cannot afford to forget that the President had recourse to the remedy now incorporated in the LMRA when seven national emergency disputes threatened to bring our entire economy to its knees. Is this not in itself overwhelming evidence of the need for such protection to the public when emergencies imperil the national health and safety?

The principle embodied in this provision cannot be rejected if our national labor policy is worthy of its name.

(8) *The provision of injunction as a remedy in the event of jurisdiction or secondary boycotts is a necessary safeguard if the right of people to work, when they have no dispute with management, is to be protected.*—The value of this principle as a powerful preventive has proved itself many times over in the past 18 months. Where is proof that the era of government by injunction is revived by the law? Management would be the last to wish that. The fact is that the injunction has been rarely used and then only in a handful of instances.

(9) *Restrictions have been placed upon jurisdictional disputes.*—The amazing picture of jurisdictional disputes in the building and construction industry, which for years have caused untold hardship to workers involved and to the Nation as a whole, now being settled without strikes, is one that proves beyond any doubt what sound laws can do.

We cannot afford to discard the principle underlying this provision.

(10) *Abuse of the right to strike is restricted in the public interest.*—Can there be any justification for strikes which would compel the employer to violate

the law? Can there be any excuse for strikes that would subject an employer to unfair labor practice charges or criminal liabilities?

I believe that the restrictions now covering this point cannot be thrown away. They must be retained.

(11) *It is vital that employers be free of any legal obligation to bargain with their own management.*—On behalf of the thousands of small- and medium-size companies in this country, I believe it is imperative that the management structure be free of conflict of interest. There cannot be a division of responsibility. A strong, sound management that operates a profitable company is labor's best guaranty of good wages and good working conditions.

(12) *Fair and impartial administration of the law is preeminently necessary.*—I have purposely kept this point to the last because I feel that it expresses the very cornerstone on which any labor legislation must rest. Confidence by both labor, management, and the public in the ability and fairness of the administration of our labor laws by the Government agencies charged with the responsibility and authority to fulfill the objectives of the law is vital to the long-range success of such legislation.

Under the Wagner Act, a charge of unfair labor practice was tantamount in the eyes of the National Labor Relations Board to conviction. Under this one-sided administration, abuses grew up that were fundamentally bad.

The principles of impartiality and even-handed administration apply as well to the United States Mediation and Conciliation Service. I believe that this agency must remain independent and separate from the United States Department of Labor. Only by remaining a strong and impartial body, free of any control by outside forces, can it make its full contribution to national industrial peace.

#### THE ISSUES INVOLVED

Any consideration of labor legislation at this point in our national history cannot be made without giving full recognition to some rather startling facts, namely: The phenomenal gains that unions have made during the period that the LMRA has been on the statute books. Contrary to their charge that unions would be undermined and destroyed, the facts show that their membership has increased to a new peak of 16,210,000 in 1948, according to the United States Department of Labor. Through peaceful negotiations in that same period, the wages of industrial employees have increased either in average hourly earnings or in over-all take-home pay. Improved working conditions and increased benefits of every kind have accrued to an increasing number of industrial employees.

The Nation has enjoyed far greater industrial peace than in any time in its history since the Wagner Act. The deepening sense of responsibility accepted by both labor organizations and employers within the framework of the present law has begun to show beneficial results which hold forth the promise of a new era of good will, mutual respect, and a greater degree of industrial peace than this country has ever seen.

Are these benefits signs of hardships inflicted upon the unions? Are they evidence of actions by employers to undermine their proper functions and importance? Can these undeniably healthy developments be construed as anything other than signposts for greater progress toward better labor-management relations in the future? On the contrary. They form an ever-growing body of evidence of the affirmative fact that the present national labor policy as incorporated in the Labor-Management Relations Act of 1947 is a law that advances the interests of all alike—workers, unions, the public, and employers.

#### CONCLUSION

Any prospect of radical reversal in our present labor policy is a cause for the gravest concern. If Congress attaches any value whatsoever to the essentiality of a cooperative and a friendly relationship between labor and management; if Congress is seeking the public good and its protection against the costly and disastrous effects of industrial warfare; if Congress is concerned with the basic rights and freedoms of individuals; then the Congress must in fairness and justice to all retain the foregoing principles.

With the retention and reinforcement of the fundamental principles essential to the cultivation of better employer-employee relationships in the plant and the improvement of collective bargaining as a constructive force for labor-management teamwork, I am confident that employers, with the utmost sincerity, will



exercise the initiative and constructive leadership for the development of an increasingly cooperative and friendly relationship with their employees and unions.

I, for one, as representing a medium-sized company, feel that this will not be possible unless the basic provisions of the Labor-Management Relations Act are retained. If they are retained, as they must be, then I can say that we look forward with high hopes to a period of deepening cooperation and teamwork between labor and management that will go far to help this country along the road to increased prosperity and a higher standard of living for all.

The CHAIRMAN. Mr. Haley, please.

Mr. Haley, will you give your name and address and any information you wish to have appear in the record?

**STATEMENT OF JAMES W. HALEY, SECRETARY AND GENERAL COUNSEL OF THE NATIONAL COAL ASSOCIATION**

Mr. HALEY. My name is James W. Haley, and I am secretary and general counsel of the National Coal Association. My business address is Southern Building, Washington, D. C. I appear here today on behalf of the National Coal Association, which is the trade association of the bituminous coal mine operators and owners.

The National Coal Association has in its membership approximately 75 percent of the total commercial production of bituminous coal in the United States and has in its membership members in each of the major coal-producing States of the United States.

Mr. Chairman, I am trying to summarize my statement, and for the convenience of the Members I shall allude to the portion of my statement to which I am directing my current remarks. At the outset, I should like to state that the bituminous coal mining industry today wishes to emphasize three points in connection with the legislation which the committee is considering. I refer to: First, union status of supervisory employees; second, treatment of national emergencies; and third, central union welfare funds.

The most important aspect of the problem of the bituminous-coal-mining industry is the question of union status of supervisory employees. This is one problem which has been resolved satisfactorily and completely by the amendments to the law, the Labor-Management Relations Act of 1947.

Prior to the enactment of the 1947 amendments there were numerous strikes and general confusion in the bituminous-coal-mining industry growing out of the controversies over union status of supervisory employees.

The history of their controversies is set forth in exhibit B attached to my prepared statement.

Senator DONNELL. Are you reading now from your statement?

Mr. HALEY. No; I am not.

Senator DONNELL. I just thought if you were, I would like to find the page.

Mr. HALEY. I am briefing the first several pages, beginning at the top of page 6. I am briefing the first six or seven pages of that section.

Exhibit C sets forth details of a number of facts growing out of the controversies in the short period of time in the latter part of 1945 when the attempt to organize supervisors was at its height.

In my prepared statement I have dealt at some length with the duties and obligations of supervisory employees in the bituminous-coal-

mining industry and reasons why they should not be members of unions for collective-bargaining purposes. This portion of the statement appears beginning at the top of page 6 and ending at the top of page 16.

I hope each member of the committee before reaching a decision on this important matter will take the time to read my statement on the subject.

Now I am beginning to read briefly beginning at the bottom of page 13 of the prepared statement.

In spite of the long and involved record pertaining to the issue of the organization of supervisory employees, it is, when reduced to fundamentals, a relatively simple problem. As you gentlemen well realize, this matter was considered exhaustively in the preceding Congress, and I believe a most realistic treatment of the issue was determined.

Actually, I wonder if this controversial issue could ever be resolved around a more realistic definition than the definition which appears in the present statute. It would seem that the definition in the present act has worked to the benefit of labor as well as management. Certainly it has clarified the issue.

When two parties, labor and management, meet around or across the bargaining table, they at that time represent conflicting interests. This principle was early recognized and effectuated in the Wagner Act and in interpretations thereof in the outlawing of so-called company unions.

In the practical course of negotiating a wage agreement, as in the coal industry, the two parties meet and effectuate an understanding concerning wages, hours, and working conditions. They do not and cannot assume to negotiate or legislate or control the manifold other problems and issues involved in the running of a major business.

That duty and responsibility is reposed in the directors of the corporation and, by the policies so determined, are executed by the officers and supervisors of the corporation who are responsible to the directors, not the wage negotiators. The line of responsibility flows through the directors, the officers, and down through the subordinate supervisory officials of the corporation.

Any person who in a substantial degree represents management of a business, including negotiation of the details of working arrangements within the mine should and must be free from the activity of union membership; he must be free from union domination and control; and he must be free from obligation of obedience to union direction.

At this point and to illustrate the conflict I should like to refer to exhibit D, which is taken from the constitution of the International Union, United Mine Workers of America. This is the obligation taken by members of the United Mine Workers of America and, of course, the right hand is supposed to be raised when it is repeated, according to the manual. The oath is:

I do sincerely promise, of my own free will, to abide by the laws of this union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for

advancing the interests of the union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.

The CHAIRMAN. Do you know the date of that?

Mr. HALEY. This was taken from the constitution.

The CHAIRMAN. Do you know the date of the constitution?

Mr. HALEY. Yes; it became effective November 1, 1948, and was adopted at Cincinnati, Ohio, on October 11, 1948. I believe this oath and obligation had been in effect prior to that time.

The CHAIRMAN. In other constitutions. They had a revised constitution evidently.

Mr. HALEY. That is correct. They revised the constitution, but I believe that the oath or obligation in substantially this form, if not in this identical form, appeared in prior constitutions.

The CHAIRMAN. Have you an idea how old it is?

Mr. HALEY. No; I do not.

Senator DONNELL. Was this oath published so that the public generally can see it?

Mr. HALEY. I don't know that it has been published generally, but it is in the printed copy of the constitution.

Senator MURRAY. Wasn't the wording of that taken in some measure from constitutions in Great Britain in the early history of labor organizations?

Mr. HALEY. I do not know, but I suspect perhaps it was to some degree, at least, but what I should like to point out particularly in connection with the coal industry is that supervisors on the spot very often do determine the wage of workers and, obviously, if the supervisor is a member of the union, he cannot bargain on behalf of the company with his brothers.

An individual cannot serve two masters. In the conventional American business enterprise where everyone on the pay roll of the company is classified as either management or labor, it is absolutely necessary to distinguish between the two where there is an operative bargaining union.

In dealings with the employer, supervisory personnel will be either labor or management. Certainly to say that a supervisor could properly function as an agent of management in dealing with subordinate employees and at the same time be a union representative is just as absurd as to say that a lawyer could effectively represent both sides in a lawsuit.

Under the way our management and labor unions have come to operate, the allegiance of the individual must be on one side of the collective-bargaining table or the other. Certainly if this is not true, collective bargaining would be a mockery, since the parties could not be adequately represented, particularly in an industry like the bituminous coal mining industry where the operations and working places are widely separated and involve as a general rule small working crews working independently in places far removed from other units and other management.



For these reasons it is essential that the independence of supervisors in the coal industry as representatives of management must be maintained all the way down the line. The people who make the contract in the bituminous coal mining industry do not conclude and resolve the bargaining process by any means. The contract itself is merely the guiding standard.

Bargaining by and between management in the mines goes on daily and even hourly between the supervisors and the members of the union. It is manifest that the supervisors must at all times maintain complete loyalty to management, and that they should not be in any union for collective bargaining purposes. To put them in this position is certainly putting them in a position of bargaining with themselves.

The CHAIRMAN. Mr. Haley, I will have to call your attention to the fact that your 10 minutes are well up.

Mr. HALEY. In summarization of the supervisory section, all I am trying to say is that the present statute has been a very effective operative statute. It has clarified this most serious problem and I believe it has clarified it to the benefit of the union as well as to the benefit of management.

Senator DONNELL. Mr. Chairman, I have here on our schedule a suggested length of 20 minutes for examination. I will yield at least 5 minutes to Mr. Haley of that time if he desires to continue with his statement.

The CHAIRMAN. He has two more points to cover.

Senator DONNELL. I will yield 8 minutes for that purpose, allowing him 4 minutes for each point.

Mr. HALEY. Thank you, Senator. I do not believe it will be necessary for me to take that much time.

The second subject which I should like to deal with briefly concerns the national emergency section of the present statute. It is the position of the bituminous coal mining industry that these sections should by all means be retained in their present form. I am reading now from near the bottom of page 3 of the prepared statement.

The meaning and effort of the national emergencies sections of the Labor-Management Relations Act is nowhere set forth more succinctly or in more meaningful fashion, indicating not only the present purpose of the law but also indicating what the situation would be without the 1947 amendment, than in the following statement taken from the brief filed last year in the United States Court of Appeals for the District of Columbia Circuit in the case brought by the Government against John L. Lewis and the United Mine Workers of America as a result of the 1948 strike in the bituminous coal mines.

Senator DONNELL. Whose brief is that?

Mr. HALEY. Brief of the United States Government, the brief of the Attorney General.

Senator DONNELL. Thank you.

Mr. HALEY. I am quoting now from the Government's brief:

The setting of the national emergencies provisions of this act is expressly cast in those situations where a strike will "imperil the national health or safety." Even in the absence of legislative authorization, courts of equity have the power to issue injunctions under such circumstances (*In re Debs*, 158 U. S. 564 (1895)). In enacting this statute, Congress has in effect done no more than reinstate the basic principle of the *Debs* case, *freed from intervening legislative limitations and restrictions*. [Italics supplied.]

Is it not significant that the United States Government would, faced with a serious and realistic application of the 1947 amendment, so clearly indicate the true meaning and impact of the statute? Your particular attention is invited to the part of the quotation which I have emphasized, reading "freed from intervening legislative limitations and restrictions." This quotation from the Government's own brief clearly points out what is so obviously true—that Congress was merely removing part of the immunity which it had previously bestowed upon labor unions.

We see much in the press and elsewhere to the effect that the national emergencies sections of the statute reimpose labor law by injunction. Even slight reflection on the factual situation will indicate that this is not so. Under the national emergencies sections of the present law, it should be ever kept in mind that the injunctive process is available not to any corporation, employer, or civilian, but only to the Attorney General of the United States, and he may proceed only at the direction of the President of the United States.

If ever there were a section of law enacted with due safeguards to all that would be affected by its application, the national emergencies section of the Labor Management Relations Act of 1947 is such a section. The United States Government in filing its brief in the court of appeals in the 1948 bituminous coal strike cases referred to above explains the injunctive section of the law as follows:

Section 208 of the act provides that the Attorney General shall petition for an injunction only upon being directed to do so by the President. The President in turn may determine to give such direction only after convening a board of inquiry in a situation in which in his opinion a threatened or actual work stoppage affecting at least a substantial part of the entire industry engaged in interstate commerce will, if permitted to occur or to continue, imperil the national health or safety. Section 208 further provides that injunctive relief shall be granted only if the court finds that the threatened or actual strike or lock-out "(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and (ii) if permitted to occur or to continue, will imperil the national health or safety."

In the next paragraph in its brief the United States Government states with reference to section 208:

The provisions of law are clearly worded, serve an essential purpose \* \* \* are reasonable in nature.

Senator DONNELL. That is the brief of Attorney General Clark?

Mr. HALEY. Yes; acting on direction of President Truman.

Senator DONNELL. Yes.

Mr. HALEY. Certainly I am not one to quarrel with the Attorney General and his able assistants in this observation. Nor do I see how any lawyer, or any citizen, can in good logic and good conscience quarrel with the Government's statement. I am merely agreeing with President Truman and his lawyers that the national emergencies sections of the present law "serve an essential purpose" and "are reasonable in nature." If that is the opinion of the executive branch of the United States Government under fire in an actual case, I do not see any reason in this world why this committee or any Senator could ever be convinced that he should recommend repeal of this section of the law.

The fact that it is the Government itself which, after elaborate preliminary and safeguarding steps, seeks the injunction, should be sufficient to allay any feeling that the power will be abused. In this regard it is significant to note that no labor leader and no Government official has come before this committee and said that the Government has abused its power under the statute. The reason that no one has ever expressed any such fear is obviously because no one has or could have any fear that such would be the case.

I should like to stress here, too, one opinion which has apparently been overlooked in connection with the national emergency section of the law, and that is the fact that it applies to management as well as labor.

Senator DONNELL. It refers to lock-outs.

Mr. HALEY. Yes; it refers to lock-outs. It should be remembered that wherever the word "strike" is used, the word "lock-out" is also used in this part of the law. It might well be that in industry an employer would like to enjoy the economic benefits that would flow from a strike, but he could be enjoined from doing so.

As a matter of fact, the injunction which was issued in the coal case ran against the coal operators as well as the United Mine Workers of America. If the technical balance were in favor of the employer it might be that he would like to ride out a long strike, and thus try to win his point in that manner, but the emergency section of the act would not permit such a thing where the national health or safety would be threatened or impaired.

Certainly labor has no more to complain about from the operation of this section than do employers.

The third point which the bituminous coal mining industry wishes to bring to your special attention concerns central union welfare funds under the law. We point out that the employers in the bituminous coal mining industry are today paying into the United Mine Workers welfare and retirement fund approximately \$1.30 per man per day's work.

This amounts to approximately one-quarter of a million dollars per day. Our position is that section 302 of the Labor-Management Relations Act should be repealed, and in lieu thereof your committee should recommend, and Congress should enact, a simple provision making it clear that central union welfare funds are not subject to required bargaining under the law.

Thank you very much, gentlemen.

Senator DONNELL. Well, you used only about 7 of your 8 minutes, Mr. Haley.

Mr. HALEY. Thank you, Senator.

(The prepared statement of Mr. Haley is as follows:)

TEXT OF STATEMENT BY JAMES W. HALEY, SECRETARY AND GENERAL COUNSEL OF  
THE NATIONAL COAL ASSOCIATION

My name is James W. Haley. I am secretary and general counsel of the National Coal Association. The National Coal Association is the trade association of the bituminous coal-producing industry, representing the owners and operators of bituminous coal mines in the United States. Its membership includes segments of the coal-producing industry in each of the major coal-producing States in the Nation. Its membership comprises approximately 75 percent of total commercial coal production in the United States.



My purpose here today is to present to the committee the views of the bituminous coal-mining industry, in a constructive attempt to aid the committee in its search for a conclusion as to an appropriate national labor policy which will bring the most benefit to the greatest number of American citizens.

It is my sincere belief that while I am here today speaking for the bituminous coal-mining industry, I am convinced that I am in the very fortunate position that the views of the bituminous coal mining industry on the important matters before the committee coincide with the national welfare and the best interests of the great majority of American citizens.

There are many matters in the bill before the committee which are of more or less importance to the bituminous coal mining industry. I shall in my statement, however, deal primarily with only the several most important issues raised by the bill as such issues relate to the bituminous coal mining industry. With respect to several other matters, I shall merely state the position of the industry.

The bituminous coal industry and the national welfare have benefited—the national welfare far more than the coal industry—in two specific fields of labor relations as a result of the 1947 amendments to the basic Federal labor law.

In one field the specific provisions and language of the law as amended in 1947 were invoked and in the other situation the language of the law as amended in 1947 averted what would, beyond question, have resulted in serious difficulty. And it is obvious that this same serious difficulty will again arise in the bituminous coal-mining industry, and in other industries, unless the applicable language of the 1947 amendment, or something approximating it, is retained in the law.

The two particular serious matters to which I refer are (1) use of the national-emergencies provisions of the statute in Nation-wide strikes, and (2) benefits flowing from the language of the 1947 amendment dealing with union status of supervisory forces.

In the paragraphs which follow I shall deal with these two important subjects and shall also make some observations and offer a suggestion calculated to improve statutory treatment of central union welfare funds. On other important points affecting the industry, I shall merely state without argument the position of the bituminous coal-mining industry.

#### USE OF THE EMERGENCY PROVISIONS OF THE STATUTE IN NATION-WIDE STRIKES

It is submitted that the record made before this committee, the record compiled in the executive branch of the Government and in the courts, added to the conflicting statements of authorities on the subject, compel a conclusion by this committee that it should recommend retention of the national-emergencies sections of the present law.

So far as I have noticed, no responsible official of the Government has expressed the opinion that the Federal Government should be without the authority specifically spelled out in sections 206 through 210 of title II of the Labor-Management Relations Act of 1947. The only difference of opinion appears to be whether it is necessary to have the specific language in the statute.

I strongly support the view that it is necessary to have the authority spelled out in the statute. I am sure, however, that any reasonable man would concede that whether or not it is necessary, it is highly desirable. The executive branch of the Government should not be put in the position of doubt as to its power to protect the national health and safety.

I am very quick to concede, of course, that the powers of the executive branch to deal with national emergencies are very great, as at least one of our leading law authorities has stated. But any lawyer and any citizen must realize that the power of the executive branch of the Government under our Constitution to deal with any situation is, at least to a certain extent, abridged by intervening action of Congress.

The right of the Federal Government, without specific congressional authority, to proceed in the courts in a national emergency labor strike would not be so clouded if there had not been intervening acts of Congress. Congress, having placed certain limitations on the courts in dealing with labor disputes, must now, in my judgment, in order to protect the national health and safety either (1) withdraw all of the limitations heretofore placed on the courts in this field, or (2) specifically define the various powers and authorities within the statutory framework.

We are not today advocating, and the committee is not considering, a proposal to remove all of the special statutory rights bestowed upon labor by acts of Congress. It therefore follows that the Congress and this committee, if they are to

discharge their responsibilities to a great majority of the citizens of this Nation, must protect and spell out the right of the executive branch to act in national emergencies growing out of labor disputes.

The meaning and effect of the national-emergencies sections of the Labor Management Relations Act is nowhere set forth more succinctly or in more meaningful fashion, indicating not only the present purpose of the law but also indicating what the situation would be without the 1947 amendment, than in the following statement taken from the brief filed last year in the United States Court of Appeals for the District of Columbia Circuit in the case brought by the Government against John L. Lewis and the United Mine Workers of America as a result of the 1948 strike in the bituminous coal mines:

"The setting of the national-emergencies provisions of this act is expressly cast in those situations where a strike will 'imperil the national health or safety.' Even in the absence of legislative authorization, courts of equity have the power to issue injunctions under such circumstances. *In re Debs*, 158 U. S. 564 (1895)). In enacting this statute, Congress has in effect done no more than reinstate the basic principle of the *Debs* case, *freed from intervening legislative limitations and restrictions.*" [Italics supplied.]

Is it not significant that the United States Government would, faced with a serious and realistic application of the 1947 amendment, so clearly indicate the true meaning and impact of the statute? Your particular attention is invited to the part of the quotation which I have underscored, reading "freed from intervening legislative limitations and restrictions." This quotation from the Government's own brief clearly points out what is so obviously true—that Congress was merely removing part of the immunity which it had previously bestowed upon labor unions.

We see much in the press and elsewhere to the effect that the national emergency sections of the statute reimpose labor law by injunction. Even slight reflection on the factual situation will indicate that this is not so. Under the national emergencies sections of the present law, it should be ever kept in mind that the injunctive process is available not to any corporation, employer, or civilian but only to the Attorney General of the United States, and he may proceed only at the direction of the President of the United States.

If ever there were a section of law enacted with due safeguards to all that would be affected by its application, the national emergencies section of the Labor Management Relations Act of 1947 is such a section. The United States Government in filing its brief in the court of appeals in the 1948 bituminous coal strike cases referred to above explains the injunctive section of the law as follows:

"Section 208 of the act provides that the Attorney General shall petition for an injunction only upon being directed to do so by the President. The President in turn may determine to give such direction only after convening a board of inquiry in a situation in which in his opinion a threatened or actual work stoppage affecting at least a substantial part of an entire industry engaged in interstate commerce will, if permitted to occur or to continue, imperil the national health or safety. Section 208 further provides that injunctive relief shall be granted only if the court finds that the threatened or actual strike or lock-out '(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and (ii) if permitted to occur or to continue, will imperil the national health or safety.'"

In the next paragraph in its brief the United States Government states with reference to section 208:

"The provisions of law are clearly worded, *serve an essential purpose*, \* \* \* *are reasonable in nature.*"

Certainly I am not one to quarrel with the Attorney General and his able assistants in this observation. Nor do I see how any lawyer, or any citizen, can in good logic and good conscience quarrel with the Government's statement. I am merely agreeing with President Truman and his lawyers that the national-emergencies sections of the present law "serve an essential purpose" and "are reasonable in nature." If that is the opinion of the executive branch of the United States Government under fire in an actual case, I do not see any reason in this world why this committee or any Senator could ever be convinced that he should recommend repeal of this section of the law.

The fact that it is the Government itself which, after elaborate preliminary and safeguarding steps, seeks the injunction, should be sufficient to allay any feeling that the power will be abused. In this regard it is significant to note that no labor leader and no Government official has come before this committee and said that the Government has abused its power under the statute. The reason that no one has ever expressed any such fear is obviously because no one has or could have any fear that such would be the case.

Attached to this statement as exhibit A is a table showing the major strikes in the bituminous coal mines since 1935. One purpose of exhibit A is to show that since the industry has been so completely unionized, major paralyzing strikes take place frequently. Another purpose in including exhibit A with my statement is to demonstrate that the 1947 amendments to the labor law have not unduly impinged upon the economic weapon of the strike available to labor unions, even in a Nation-wide shut-down since it will be noted from the exhibit that the Nation-wide strike in the bituminous coal industry in 1948 lasted for 40 days before it was terminated as a result of the injunction which was issued on petition of the Attorney General acting at the direction of the President of the United States.

#### UNION STATUS OF SUPERVISORY EMPLOYEES

Perhaps the most salutary portion of the Labor Management Relations Act from the standpoint of business, the coal-mining industry, and from the standpoint of the Nation, and the part of the act for which we today most strongly implore retention, is the section dealing with the union status of supervisory employees. The importance of this section of the statute, while indicated in all industry and in many other specific industries, is no doubt nowhere so strongly emphasized as in the bituminous coal mining industry. While the coal industry has been the industry in which this problem has risen to most severe proportions, it could and no doubt would in time assume equally serious importance in other particular industries and in industry in general, unless adequate statutory safeguards are present.

On behalf of the bituminous coal mining industry and other industries, and, indeed, on behalf of tranquility in industrial relations throughout the Nation with resultant benefit to the general welfare, we implore that your committee recommend and that Congress follow your recommendations to the effect that the provisions in the law, inserted in 1947, dealing with union status of supervisory employees be retained.

The importance of the provisions dealing with union status of supervisory employees can be summarized by the bare statement that prior to enactment of the 1947 amendments there had been for a number of years almost continual strife, controversy, and strikes with resultant impairment of the national economy as a result of issues growing out of attempts or would-be attempts to organize supervisory employees in the coal industry. On the other hand, as the record will show, upon enactment of the amendments in 1947 it was possible to amicably settle this serious controversy to the benefit of all concerned—the public generally, the bituminous coal mining industry, the supervisory personnel, and the production employees in the mines.

The long and costly history of this controversy for the last 10 or 12 years is set forth in exhibit B.

An indication of the magnitude of the problem inherent in attempting to resolve the controversy growing out of attempts to unionize supervisory employees is shown by the record of cases involving the issue handled by the National Labor Relations Board. From 1944 through June of 1948 the Board processed 688 petitions for certification of units of supervisors. Of these petitions several hundred were pending before the Board when the 1947 amendments to the Wagner Act were adopted by Congress. These cases were dismissed as a result of the 1947 amendments. It should be borne in mind also that the Supreme Court upheld the certification of units of supervisors for the first time on March 10, 1947 in the Packard case. Unionization of supervisors was given tremendous impetus by that decision, and undoubtedly if the 1947 amendment had not intervened, cases in this field which the Board would have been called upon to process would have run into the thousands. It is certainly obvious that if the 1947 amendments are repealed, this controversy will be put right back where it was when the 1947 act intervened to save the situation.



In order fully to understand and appreciate the importance and significance of supervisory employees in the bituminous coal mining industry, it is necessary

Generally speaking, coal mines fall into three classifications. In a strip mine the earth and rock lying on top of a seam of coal are removed by shovels and the coal extracted at the surface. In a shaft mine a vertical hole is driven down into the coal seam, and the coal mined by working outward from the bottom of the shaft. In a drift mine, sometimes also referred to as a slope mine, the mine entrance is in the side of a hill, and the coal is taken from the seam inside of the entrance in relatively the same way that it is extracted from around the base of a shaft.

While there is no substantive difference in the nature of the duties and obligations of supervisory employees in the three types of coal-mining operations, the references which follow are generally to supervisory employees in shaft and drift mines. With the exception of hoisting, the plan of operation in a shaft and drift mine is approximately the same; as coal is extracted from a mine the so-called working face or working place retreats, the direction of retreat being determined by what is deemed to be most economical and effective mining operations.

As the working face retreats, when coal is mined it must be taken to the outside or to the bottom of the shaft to be hoisted. For that transportation every mine requires a complete operating railroad system. It might be explained that there are some mines which use belt coal conveying systems, but the large majority use rail transportation. The point where the actual mining is being carried on is referred to as a section, and a mine may have from one to a score or more of operating sections, with many miles between the individual sections. Each section can properly be referred to as a mine in itself for at each section there are encountered all of the problems inherent in mining and each must be supervised as a complete installation in itself.

Some indication of the size of a relatively large mine can be gained from a realization of the fact that it may have 50 miles of working track, and its equipment may consist of 50 electric locomotives and over 1,200 mine cars. The actual mining and high-speed transportation of coal to the surface is a highly specialized and complex operation, one in which the responsibilities of management are absolute and definite.

When development work goes forward, when the coal is undercut, when it is blasted, when it is loaded, when the timbering is done, when fresh air is supplied, and when the coal is transported to the surface, the responsibility of management follows.

Normally every sizable operating coal mine has many necessary adjuncts. The tippie, which is close to the mine mouth, prepares the coal for market by cleaning and sizing it. There may be a power plant for the generation of electric power; a woodworking plant and sawmill; a large blacksmith shop; and a modern machine shop; and, in special cases, a beehive coke plant.

To carry out the responsibilities above referred to, management is represented by supervisory employees holding various titles. But whatever the title held by the employee, his duties in the management field are dictated by conditions and the nature of his responsibilities. In the paragraphs which follow I shall set forth the duties and responsibilities of these employees who exercise supervisory and managerial functions.

It can readily be seen that an operating coal mine is an institution of sizable proportion and is a place where the representatives of management cannot be in immediate and close contact with each other and with top management levels. This is obviously true because of the isolation of their places of work. The conduct of a going mine absolutely necessitates the maintenance of a considerable number of men in the mine to represent the employer in all operating problems, including the preservation of life and health and the protection of property. Men who have charge of the operating facilities and on whose shoulders fall the burdens of management must, too, necessarily represent the employer, with full authority, in all the employer's relations with his employees.

It is now my purpose to present to you a rather detailed account of the responsibilities of supervisory employees who represent and act for management and ownership in the coal industry. As I have told you, the very nature of their duties is such that their authority must be instant and absolute, for the mining of bituminous coal does not lend itself to on-the-spot round-table discussions by supervisory personnel. The supervisory employee in the coal industry,

and as contemplated in the 1947 amendments to the labor law, has the managerial duty and responsibility to:  
to have some realization of the workings of a coal mine and the actual duties and obligations of supervisory employees.

Make sure that all ventilating apparatus, airways, etc., are properly constructed and maintained so as to direct fresh air to all the working faces;

Direct and see that the roof of each working place is properly secured and that no person is permitted to work in unsafe places;

Assume responsibility for a sufficient supply of props and timber;

See that coal is blasted in accordance with State laws;

See that as the miners advance, all dangerous roof is taken down or carefully secured and with authority to discharge anyone neglecting to carry out his instructions;

Examine in his section all of the air courses and roads and all of the openings that give access to old workings or falls and make a record thereof;

Visit each working place during each shift, which visit must be while the employees are at work;

Pass upon the competency of persons he has placed to work in his section and truly see that such persons properly perform their work without endangering the lives of coemployees, and if an employee is not competent to perform the duties assigned to him, he must be assigned to work for which he is qualified, or discharged (here it will be seen that the real power of employment and assignment rests absolutely with the man in charge of the section of the mine);

See that there is no accumulation of gas in his section, and if gas is present see that it is removed;

Provide for proper drainage of the working places;

Carefully supervise the approach of employees and acting working places to abandoned sections;

See that the fire bosses employed in his section have truly carried out their duties;

See that all safety blocks, safety switches, and other appliances used to improve the safety of the mine are properly used and protected, and when his orders in this regard are ignored, he may suspend or discharge offenders;

Truly report at the end of each shift the general condition as to safety in all working places in his section.

Moreover, in all States supervisory employees are required to pass an examination, secure a certificate, and carry out the laws of the State and be responsible therefore; also they now must be familiar with the Federal Safety Code and its application.

Under the wage agreements in force in the industry, the supervisor exercising managerial functions would have duties and responsibilities as follows:

He must check the loading of impurities and has complete charge of face preparation.

He has charge of car distribution and is to see that each employee receives his fair share of cars.

He supervises motormen when gathering loaded cars, their assembly into trips or trains and movement to the outside.

He is authorized to make contracts providing the method and amount of payment for work not specifically covered by wage agreements. Decisions as to these contracts must ordinarily be made on the spot and the supervisor carries full responsibility of management.

He represents the operator in the first step of the settlement of all grievances which an employee in his section may have. This is a contract provision and in such case he has full authority to bind the operator.

He has authority to discharge any employee who absents himself from his work 2 days without permission.

In conclusion, with regard to the above-named duties, it may well be said that such supervisory personnel have full charge of the working forces in their sections. They direct all activities, enforce all rules, and take disciplinary action where necessary.

I want to call the committee's attention to the fact that in addition to the duties required by law and by wage agreements, supervisory personnel have many other duties which are performed as a representative of management.

Such other duties vary from mine to mine depending upon local conditions and varying policies, including:

- Preparing original time record of hourly employees;
- Seeing that supplies are used efficiently;
- Recovering supplies and other equipment and material from abandoned or worked out portions of the mine;
- Instructing employees as to their duties and responsibilities;
- Making of time studies;
- General supervision of all items of production cost;
- All other matters in the section connected with the production of coal and application of the operator's policy.

From the above recitation it would seem to be apparent that it is impracticable, if not impossible, for the owners and operators of coal mines to carry out the many duties and obligations imposed on them by law, by the contractual obligations they have with the union, and by the financial laws of the States in which they are incorporated, if their direct representatives and the persons to whom they delegated their obligations become a part of the collective bargaining unit of the employees.

It is emphasized that the magnitude, scope, and area covered and functions performed daily in a coal mine require the delegation of operator's responsibilities, duties, obligations, and powers to a sufficient number of men to carry out all of these immediately, as if the owner or operator himself were present to make each decision; that any restriction upon this right will impair efficiency of operations, break down safety rules and regulations, increase fatal and non-fatal accidents, and increase the cost of production of coal beyond proper obligations. It is also emphasized that dependent upon the size of the mine, location of its production employees above and below ground, necessary auxiliary operations, the proper number of supervisory personnel to carry out the owner's or operator's policies as if he were present must be maintained in a position solely responsible to the owner or operator; and the judgment of such supervisory personnel must not be attacked and weakened by coercion, intimidation, direction or authoritative influence from any outside source or person, including any union, but their loyalty, duty, and fidelity within the law of the land must be solely to management.

On March 9, 1943, in his opening statement to the wage conference, Mr. John L. Lewis announced that he proposed to bargain for and include in the wage contract provisions dealing with the wages, hours, and working conditions of supervisory forces in the coal mines. He demanded that the contract contain a provision that "the term 'mine worker' as used in this agreement shall include all persons inside or outside of the mine, except the superintendent."

As is indicated in exhibit B this demand of the United Mine Workers of America, while not acceded to in the 1943 negotiations, precipitated an intense organizing struggle within the bituminous coal mining industry. This intense campaign culminated in a general strike in the late summer and early autumn of 1945. The details of this costly and unnecessary shut-down are set forth in exhibit C. Exhibit C gives a summary of reported strikes growing out of the controversy as to unionization of supervisory employees from August 1, 1945, to December 31, 1945. It will be noted that the exhibit covers only nine of the producing districts of the country. The survey does not include the State of Illinois nor does it include any of the producing districts west of the Mississippi River. The producing districts referred to in the left-hand column of the exhibit are the major producing districts of the East, as set forth in the Bituminous Coal Act of 1937. The exhibit shows that in the mine districts covered by the survey, strikes over the supervisory organization issue in the 5-month period caused the loss of 17,646,387 net tons of bituminous coal. Certainly if the 1947 amendments to the labor law had been in effect in 1945 this strike would have been averted.

In spite of the long and involved record pertaining to the issue of the organization of supervisory employees, it is, when reduced to fundamentals, a relatively simple problem. As you gentlemen well realize, this matter was considered exhaustively in the preceding Congress, and I believe a most realistic treatment of the issue was determined. Actually, I wonder if this controversial issue could ever be resolved around a more realistic definition than the definition which appears in the present statute. It would seem that the definition in the present act has worked to the benefit of labor as well as management. Certainly it has clarified the issue.



When two parties, labor and management, meet around or across the bargaining table they at that time represent conflicting interests. This principle was early recognized and effectuated in the Wagner Act and in interpretations thereof in the outlawing of so-called company unions. In the practical course of negotiating a wage agreement, as in the coal industry, the two parties meet and effectuate an understanding concerning wages, hours, and working conditions. They do not, and cannot, assume to negotiate or legislate or control the manifold other problems and issues involved in the running of a major business. That duty and responsibility is reposed in the directors of the corporation and, by the policies so determined, are executed by the officers and supervisors of the corporation who are responsible to the directors, not the wage negotiators. The line of responsibility flows through the directors, the officers, and down through the subordinate supervisory officials of the corporation. Any person who in a substantial degree represents management of a business, including negotiation of the details of working arrangements within the mine, should and must be free from the activity of union membership; he must be free from union domination and control; and he must be free from obligation of obedience to union direction.

At this point your particular attention is invited to exhibit D which sets forth in full quote the obligation taken by new members of the United Mine Workers of America.

An individual cannot serve two masters. In the conventional American business enterprise where everyone on the pay roll of the company is classed as either management or labor, it is absolutely necessary to distinguish between the two where there is an operative bargaining union. In dealings with the employer, supervisory personnel will be either labor or management. Certainly to say that a supervisor could properly function as an agent of management in dealing with subordinate employees and at the same time be a union representative is just as absurd as to say that a lawyer could effectively represent both sides in a lawsuit. Under the way our management and labor unions have come to operate, the allegiance of the individual must be on one side of the collective bargaining table or the other. Certainly if this is not true, collective bargaining would be a mockery, since the parties could not be adequately represented, particularly in an industry like the bituminous coal mining industry where the operations and working places are widely separated and involve as a general rule small working crews working independently in places far removed from other units and other management.

For these reasons it is essential that the independence of supervisors in the coal industry as representatives of management must be maintained all the way down the line. The people who make the contract in the bituminous coal mining industry do not conclude and resolve the bargaining process by any means. The contract itself is merely the guiding standard. Bargaining by and between management in the mines goes on daily and even hourly between the supervisors and the members of the union. It is manifest that the supervisors must at all times maintain complete loyalty to management, and they should not be in any union for collective bargaining purposes—to put them in this position is certainly putting them in a position of bargaining with themselves.

If there is a mining town containing 100 men working in a mine and 93 of them are members of the United Mine Workers of America and the remaining 7 supervisory employees are members of that union or any other union, is it not easy to see that the 7 supervisors would be under the complete domination of the union point of view? This would certainly be true if they were members of the same union as the production employees, and it would probably be true if they were members of a different union. Moreover, if they were members of a different union, the 7 supervisory employees could effectively strike the mine, and all of the production workers, whether or not in sympathy with the striking supervisory employees, would be required by law to remain outside of the mine; and the production workers thus prevented from work would probably be termed unemployed for purposes of unemployment compensation acts with resultant serious economic consequences to the company, to themselves, and to the public.

#### PAYMENTS TO UNION WELFARE FUNDS

It is noted that the bill being considered by the committee would repeal the provisions of the 1947 amending act concerning payments into union welfare funds. We believe this subject is of such magnitude and importance as to warrant further very serious study by your committee with a view to recommending that

Congress enact legislation which would be an improvement over the 1947 amendments.

Illustrative of the problem in this field is the experience of the bituminous coal mining industry. Since June 1, 1946 the bituminous coal mine operators have paid into the so-called welfare and retirement fund over \$150,000,000. Currently the coal operators are paying into this fund one-quarter of a million dollars per day. Expressed another way, the coal industry is paying into the fund approximately \$1.30 per man per day worked. It should be kept in mind that this \$1.30 per man per day worked which employers in the bituminous coal mining industry are today required to pay into the welfare and retirement fund is in addition to contributions which employers in the bituminous coal mining industry must pay into the Federal social-security fund.

We think Congress must seriously consider the effect of union welfare funds in connection with the over-all social-security program. It must be remembered that payments made out of such funds are for the exclusive benefit of union members. Unless Congress takes appropriate action in the field, it is a foregone conclusion that the central union welfare fund will extend into many other industries, if not in every industry and every plant which is unionized.

If the \$1.30 per union member per day worked levy which now prevails in the bituminous coal mining industry is carried over and applied to union members throughout the country, the result will be an over-all levy on the American people of many billions of dollars annually for the exclusive benefit of the 15 or 16 million union members.

The question for Congress to resolve is: Should the American citizens be called upon to bestow special benefits upon a privileged group? Expressed another way, the question is: Should the American people be called upon to pay for a special social-security system for union members which will be in addition to the social-security benefits made available to citizens generally under the Federal social-security laws?

The issue before Congress is all the more important at this time because of the general feeling that the Federal social-security program should or will be extended and liberalized.

What Congress should do about the central union welfare fund is indeed a serious problem. Beyond doubt it is so important that I question whether there will be any more important domestic issue before the Congress in the next several years.

Obviously a practicable, sensible, and desirable immediate solution would be to amend the law to remove the central union welfare fund from the field of required bargaining under the law. I strongly urge that your committee give most serious consideration to this whole problem and that you recommend, and work for, amendment of the law to make it clear that discussion of such funds is not within the field of required collective bargaining.

In addition to the three subjects which I have dealt with hereinabove at some length, namely, the national emergencies section of the law, union status of supervisory personnel, and treatment of central union welfare funds, there are a number of matters being considered by your committee which are of consequence to the bituminous coal mining industry, as well as to other industry. However, I shall not deal with them other than to state the position of the industry, which is that it is our view that the language of the present statute should be retained with respect to dealing with jurisdictional strikes and secondary boycotts, it being our view that the present statute would probably come nearer accomplishing the desired purpose than would the substitute provisions suggested in S. 249. The Conciliation Service should be maintained as a separate governmental function, independent of the Labor Department. Unions should be subject to the same restrictions with respect to political contributions which apply to corporations. Employers should be protected in the right of free speech, so long as such speech contains no threat of reprisal or promise of benefit.

In brief summary it is the view of the bituminous coal mining industry that no change should be made in the law at this time except that section 302 of the 1947 amendments should be repealed, and in lieu thereof appropriate legislation should be adopted which would make it clear that consideration of central union welfare and retirement funds is without the realm of required collective bargaining under the law.

EXHIBIT A.—*Major bituminous coal strikes, 1935 through 1948*

[Unionization of the mines has been virtually complete since 1933]

Beginning date	Approximate duration	Workers involved	Man-days idle
Sept. 23, 1935	1 week (longer in some areas).....	400,000	2,171,000
Apr. 1, 1939	1½ months.....	330,000	6,920,000
Apr. 1, 1941	1 month (1½ months in some areas).....	318,000	5,348,000
Sept. 14, 1941	11 working days (from Sept. 14 to Nov. 22).....	53,000	666,000
Nov. 17, 1941	1 week.....	115,000	300,000
May 1, 1943	3 days in May, <sup>1</sup> 10 days in June, 6 days in November <sup>1</sup> .....	360,000	7,018,000
Apr. 3, 1945	10 days <sup>1</sup> .....	100,000	645,000
Sept. 21, 1945	26 days.....	209,000	3,125,000
Apr. 1, 1946	59 days <sup>1</sup> .....	340,000	14,620,000
Nov. 21, 1946	17 days <sup>2</sup> .....	335,000	4,000,000
Apr. 2, 1947	17 days.....	300,000	3,552,000
Mar. 15, 1948	40 days <sup>2</sup> .....	320,000	8,610,000

<sup>1</sup> Terminated by seizure of coal mines by U. S. Government.<sup>2</sup> Terminated by Government injunction.

## EXHIBIT B. CHRONOLOGY OF DEVELOPMENTS IN CONNECTION WITH ATTEMPTS TO UNIONIZE SUPERVISORY EMPLOYEES IN THE BITUMINOUS-COAL-MINING INDUSTRY

December 30, 1937: Fire bosses at the Berry Mine of Ford Collieries Co., Curtisville, Pa., met with Mr. Pollock, superintendent, and the mine foreman. As a result of this meeting, it was agreed that fire bosses should be paid \$8 per day for each day the mine worked.

December 1940: Conference of fire bosses at Ford Collieries mines, arranged by Mr. John McAlpine, with Mr. Pollock, superintendent, resulted in the discharge of Mr. McAlpine, and his reinstatement within 6 weeks upon order of the National Labor Relations Board.

April 15, 1941: A unilateral notice signed only by Ford Collieries Co. and referred to as a "negotiated agreement" was posted at the Ford Collieries Co.'s mines, effective April 1, 1941. Upon its expiration, the company denied that the supervisors had the right to bargain for a new agreement. Following Mr. McAlpine's reinstatement, he participated actively in the organization of supervisors from other mines as well as those of the Ford Collieries Co. and was elected president of such organization, which was designated as the Mine Officials' Union of America.

June 19, and July 6, 1941: The Appalachian agreement signed by representatives of northern bituminous coal operators on June 19 and southern bituminous coal operators on July 6 and the United Mine Workers of America contained the following clause concerning exempt employees:

## "EXEMPTIONS UNDER THIS CONTRACT

"The term 'mine worker' as used in this agreement shall not include mine foremen, assistant mine foremen, fire bosses, or bosses in charge of any classes of labor inside or outside of the mine, or coal inspectors or weigh-bosses, watchmen, clerks, or members of the executive, supervisory, sales, and technical forces of the operators."

November 21, 1941: A petition was filed with the National Labor Relations Board's regional director for the sixth district at Pittsburgh, Pa., by the Mine Officials' Union of America, requesting investigation of supervisory employees of the Union Collieries Coal Co., Oakmont, Pa., and certification of representatives pursuant to section 9 (c) of the Wagner Act. Designated case No. R-3464.

January 12-14, 1942: Hearing held in case No. R-3464 before an NLRB trial examiner at Pittsburgh, Pa.

February 3 and March 24, 1942: Oral argument held in Washington before the National Labor Relations Board in the Union Collieries case No. R-3464.

June 15, 1942: Decision issued by the National Labor Relations Board in Union Collieries case No. R-3464 determining the Mine Officials' Union to be an appropriate bargaining unit and directing that an election be held accordingly at the mines of that company.

July 9, 1942: Decision rendered by Umpire Harry Boulton in central Pennsylvania Commissioners' case No. U-561, involving the Pennsylvania Electric Co.,



- ruled that certain exempt employees classified as mine electricians should belong to the United Mine Workers of America.
- July 10, 1942: Election held at Union Collieries Co. at direction of NLRB 44-5. in favor of recognition of Mine Officials' Union.
- July 14-15, 1942: Report of survey of Central Pennsylvania companies regarding exempt employees made to Mr. O'Neill by Mr. Jones.
- August 3, 1942: Oral argument held in Washington before National Labor Relations Board in Union Collieries case No. RX3464 in which the Central Pennsylvania Coal Producers' Association participated through its attorney, Mr. Frank G. Smith.
- August 8, 1942: Report to Mr. O'Neill from Mr. R. M. Newcombe, labor commissioner, on number of Central Pennsylvania cases brought under rule 20 from December 2, 1935, to March 25, 1942.
- August 13, 1942: Report of the Central Pennsylvania Coal Producers' Association as amicus curiae in the Union Collieries case No. R-3464 filed with National Labor Relations Board.
- September 18, 1942: Mine Officials' Union certified by National Labor Relations Board as bargaining agent for supervisory employees in Union Collieries case No. R-3464.
- September 23, 1942: Letter to Mr. O'Neill from Mr. John McAlpine requesting that the Central Pennsylvania Coal Producers' Association engage in collective bargaining with the Mine Officials' Union.
- October 1942: At its annual convention in Cincinnati, Ohio, the United Mine Workers of America unanimously approved a petition to amend its constitution to permit its affiliation with supervisors. The terms of affiliation provided that the organization known as the Mine Officials' Union of America should be dissolved and succeeded by an organization designated as "United Clerical, Technical, and Supervisory Employees of the Mining Industry, Division of District 50, United Mine Workers of America."
- February 1943: Successor organization, United Clerical, Technical, and Supervisory Employees, was duly admitted into district 50 of the United Mine Workers of America at a UMW executive board meeting in Washington, D. C.
- February 11, 1943: Meeting of the following held in Pittsburgh to consider proposal submitted by Mr. Don Rose pertaining to exempt employees: Messrs. Richard Maize and Delaney of the Pennsylvania State Department of Mines; Don Rose, John Corcoran, Walter Schulten, K. M. Quickel, Charles Albright, E. B. Winning, Hamilton (assistant to Mr. Winning), H. L. Good, E. A. Siemon, M. L. Markel, James Patterson, Marshall Gillette, George Smith, Frank Smith, and Walter Jones.
- February 20, 1943: The United Mine Workers of America transmitted a communication to district and local union officials in all bituminous-coal-producing districts within the United States, requesting union officers and representatives to present application blanks for U. M. W. of A. membership to all employees heretofore exempted under the wage contract.
- March 9, 1943: In his opening statement to the wage conference, Mr. John L. Lewis announced that he proposed to bargain for and include in the wage contract the wages, hours, and working conditions of the supervisory forces. One of his demands was:

#### "8. Exemptions Under This Contract

"The term 'mine worker' as used in this agreement shall include all persons inside or outside of the mine, except the superintendent."

- May 11, 1943: Decision issued by National Labor Relations Board in *Maryland Drydock Co. v. Local No. 31 of the Industrial Union of Marine and Shipbuilding Workers*, cases Nos. R-5212 and R-5214, reversed position taken in Union Collieries case that supervisory employees' union should be recognized as an appropriate bargaining unit.
- August 30, 1943: War Labor Board issued order complying with requests of coal operators' representatives to increase and adjust wages and salaries of those of their employees not covered by their contracts with the United Mine Workers of America and over whose wages and salaries the War Labor Board had jurisdiction.
- November 12, 1943: Letter from Mr. John McAlpine addressed to Mr. Charles O'Neill requested a meeting of company officials with United Clerical, Technical and Supervisory Employees' Union representatives for the purpose of bargain-

- ing for supervisory employees. Similar letters sent by Mr. McAlpine to the following Pennsylvania coal-producing companies: Rochester and Pittsburgh Coal Co., Northwestern Mining & Exchange Co., Pennsylvania Coal & Coke Corp., Coal Mining Department of the New York Central Railroad, Pittsburgh Coal Co., Mather Collieries, Duquesne Light & Power Co., Hillman Coal & Coke Co., Wheeling Steel Corp., and Butler Consolidated Coal Co. Case No. 13-270.
- December 17, 1943: Ickes-Lewis agreement of November 3, 1943, incorporated in the national bituminous-coal wage agreement signed by bituminous-coal producers with United Mine Workers of America in Washington, D. C. This agreement carried forward, by reference, the clause concerning exemptions under the contract, contained in the 1941 Appalachian agreement.
- February 3, 1944: A letter from the president of the United Clerical, Technical and Supervisory Employees' Union, addressed to all mine workers, referred to the supervisory organization drive now being conducted by every district of the UMWA. Certain facts were presented indicative of union action.
- February 4, 1944: War Labor Board issued order denying request of coal-operator representatives for authority to make general increases to supervisory employees not covered by the contract with UMWA, and directing that requests for wage and salary adjustments for such employees be submitted to the appropriate regional War Labor Board office with supporting evidence for specific job classifications. Adjustments to be retroactive to Ickes-Lewis agreement, November 1, 1943. Case No. 13-342.
- February 15, 1944: Oral argument held before National Labor Relations Board in Washington in the *Soss Manufacturing Co. and Republic Steel Corp. v. The Foremen's Association of America*, case Nos. 7-C-1148 and 8-C-1569, on the question of whether the discharge of a supervisory employee for union activity constitutes an unfair labor practice within the meaning of section 8 of the Wagner Act.
- March 10-11, 1944: Hearing held before trial examiner of the National Labor Relations Board at Indiana, Pa., on petition filed December 21, 1943, and amended January 13, 1944, by the United Clerical, Technical and Supervisory Employees' Union against the Rochester & Pittsburgh Coal Co., charging that the company refused to recognize said union as collective-bargaining representatives of clerical and technical employees. Case No. 6-R-896.
- March 30, 1944: Brief and argument of the Rochester & Pittsburgh Coal Co. filed with the National Labor Relations Board in case No. 6-R-896.
- May 8, 1944: National Labor Relations Board sustained the appeals of the Foremen's Association in the *Soss Manufacturing Co. and Republic Steel Corp.* cases, Nos. 7-C-1148 and 8-C-1569, and ruled that "supervisory employees may not be discharged or otherwise discriminated against because they belong to an independent foremen's union."
- May 31, 1944: Three-man panel appointed by the National War Labor Board, pursuant to its resolution of May 18, 1944, to conduct hearings in dispute cases filed with the Board by the following companies involving unions representing foremen and other supervisory employees: Murray Corp. of America, Briggs Mfg. Co., Chrysler Corp., Republic Steel Corp., Maryland Drydock Co., Packard Motor Car Co., Bohn Aluminum and Brass Corp., and Baldwin Locomotive Works.
- June 14, 1944: Letter sent to Secretary of Labor Perkins, the National Labor Relations Board and the War Labor Board from Mr. John McAlpine, president, United Clerical, Technical and Supervisory Employees' Union, requesting election for a strike vote within 30 days at the mines of the Rochester & Pittsburgh Coal Co. and 13 other companies in Pennsylvania.
- June 29, 1944: National Labor Relations Board dismissed petition of United Clerical, Technical and Supervisory Employees against the Rochester & Pittsburgh Coal Co., case No. 6-R-896.
- July 7, 1944: Mr. O'Neill met with Dr. John R. Steelman, Department of Labor, to discuss the supervisory employee issue and the filing of complaints against 14 Pennsylvania companies. Certification to the War Labor Board withheld for more than a month.
- July 17-August 15, 1944: Additional complaints filed with Labor Department by United Clerical, Technical and Supervisory Employees' Union against numerous coal-producing companies in Pennsylvania, West Virginia, Alabama, and Kentucky.
- August 14-26, 1944: Notice of impending strike and request for an election filed by United Clerical, Technical and Supervisory Employees' Union in instances involving some 70 companies—service made as directed by law.

- August 15, 1944: Meeting of representatives of coal companies against whom complaints were filed by the United Clerical, Technical and Supervisory Employees' Union on June 14 was held at Pittsburgh, Pa.
- August 16, 1944: First strike vote taken at Ford Collieries mines, Curtisville, Pa.; supervisory employees struck and mines closed down.
- August 18, 1944: Case certified to the War Labor Board and designated case No. 111-1025SD.
- August 19, 1944: Strike vote taken at mines of Rochester & Pittsburgh Coal Co. Supervisory employees walked off the job, and mines were closed down.
- August 21, 1944: Rochester & Pittsburgh Coal Co. case certified to the War Labor Board and included in case No. 111-1025SD.
- August 28, 1944: Show cause hearing held by War Labor Board in case No. 111-1025SD at Department of Labor, Washington, D. C.
- August 29, 1944: War Labor Board issued an order directing that the strikes be ended.
- September 1, 1944: Government seizure of struck mines began; 73 mines were seized (West Virginia, Pennsylvania, and Kentucky) and not returned to owners until February 24, 1945. Work was resumed under Government seizure after production of nearly 4,000,000 tons of coal were lost.
- September 17, 1944: Appointment of a three-man panel to investigate the issues and report its findings in case No. 111-1025SD to the War Labor Board.
- September 25, 1944: The following met at 45 Rust Building, Washington, before attending a hearing before the three-man coal panel of the War Labor Board regarding procedure in the supervisory employees' strike: Messrs. O'Neill, Heath Clark, Vernon Fritchman, F. G. Smith, Walter Jones, Harry Moses, George Thursby, B. L. Rawlins, C. E. Cowan, George Brackett, Truman Johnson, Frank Amos, Senator Burke, Duncan Kennedy, and Evans Rose.
- September 29, 1944: The United Clerical, Technical and Supervisory Employees' Union withdrew strike vote request at 35 coal mines in Pennsylvania, West Virginia, Kentucky, and Alabama. The mines included those whose operators had petitioned the United States District Court to restrain the NLRB from taking the votes.
- October 18-21, November 15-17, and November 28-30, 1944: Hearings held by the three-man panel of the War Labor Board at Pittsburgh, Pa., regarding Government-seized mines of the following companies: Ford Collieries Co., Rochester & Pittsburgh Coal Co., Pittsburgh Coal Co., Republic Steel Corp., and H. C. Frick Coke Co.
- January 8, 1945: The following met at 45 Rust Building to discuss hearings scheduled for January 9 in case No. 111-1025SD: Messrs. Heath Clark, Don Rose, Vernon Fritchman, F. G. Smith, John Corcoran and, for Republic Steel Corp., B. L. Rawlins, Hamilton, and McGee.
- January 9-10, 1945: Hearings held before three-man panel of the War Labor Board in Washington, case No. 111-1025SD, Ford Collieries Co. et al. Hearing confined itself to the above-named five companies out of the 69 companies involved.
- January 19, 1945: Panel Report and Findings (referred to as Slichter report) submitted to War Labor Board.
- February 25, 1945: Brief and argument of Ford Collieries Co., Rochester & Pittsburgh Coal Co., Pittsburgh Coal Co., Republic Steel Corp., and H. C. Frick Coke Co. filed with War Labor Board in case No. 111-1025SD.
- March 1, 1945: United Mine Workers of America included in its demands presented to the operators at the current wage negotiation proceedings union membership of all persons employed inside and outside of mines, except the superintendent and one mine foreman.
- March 10, 1945: Panel Report and Recommendations (referred to as Spohn report) submitted to War Labor Board in Ford Collieries case No. 111-1025SD.
- March 26, 1945: Decision rendered by National Labor Relations Board in Packard Motor Car case No. 71-1884, recognizing the Foremen's Association of America as the appropriate bargaining unit for that company.
- April 10, 1945: United Mine Workers of America negotiating committee withdrew its original wage proposal No. 4 concerning exempt employees, and following the rejection of a substitute proposal the mine workers agreed to accept the renewal of the exemption clause as set out in the 1941-43 agreement. This action was confirmed by letter dated April 16, 1945, from Mr. Welly Hopkins addressed to Mr. Charles O'Neill and associate members, National Bituminous Coal Operators' negotiating committee.



- April 24, 1945: War Labor Board granted approval of application of increases to exempt employees under its jurisdiction as requested by operators' negotiating committee on April 17, 1945.
- May 1, 1945: Mr. O'Neill met with Mr. Lewis at the Roosevelt Hotel in New York to discuss the supervisory-employee issue. Mr. Lewis had no objection to the operators making a survey of exempt employees and their duties.
- May 5, 1949: Circular letter sent to all operator signatories to the wage agreement signed April 11, 1945, by the operators' negotiating committee requesting detailed and specific information regarding classification and statutory duties of exempt employees.
- May 8, 1945: Treasury Department issued an order approving application of operators' negotiating committee for increase to exempt employees under Treasury Department's jurisdiction.
- June 4, 1945: Mr. Van Horn and Mr. M. L. Garvey had a conference with War Labor Board representative, Mr. Leonard Berliner, concerning policy of granting wage and salary adjustments to employees not covered by the contract with UMW.
- June 21, 1945: Meeting of the following was held at the office of the United Mine Workers of America in Washington to discuss the exempt employees' survey: Messrs. Van Horn, O'Neill, and Burke, for the operators; Messrs. Lewis, Hopkins, O'Leary, Owens, Mark, and Sweeney, for the mine workers.
- June 28, 1945: Meeting of operators' negotiating committee held at Shoreham Hotel, Washington, D. C.
- July 3, 1945: Letter of notification sent by National Labor Relations Board to a number of coal companies, including Raleigh-Wyoming Mining Co. of Illinois and the Pennsylvania Coal & Coke Co., advising that petition for certification of representatives had been filed by the United Clerical, Technical and Supervisory Employees involving supervisory employees of their companies.
- July 5-7, 1945: Meeting of the following was held at 45 Rust Building, Washington, D. C., to compile returns of exempt employees' survey: Messrs. B. W. Deringer, M. L. Markel, Ford Sampson (Ohio Coal Association), Quentin Wible (captive steel), Fred Welker and Walter Trumond (Southern Coal Producers' Association).
- August 8, 1945: Letter addressed to operators' negotiating committee by Mr. George W. Taylor, Chairman of the War Labor Board, regarding approval of wage adjustments to exempt employees.
- July 9, 1945: First mimeographed summary of exempt employees' survey. At a meeting of the operators' negotiating committee at the Shoreham Hotel, following subcommittee of three named to handle exempt employees' question: Messrs. O'Neill, Burke, Moses.
- July 10, 1945: Letter sent to all operator signatories to the 1945 agreement by operators' negotiating committee stating that the committee would support any operator against whom charges are filed with the NLRB for failure to bargain with supervisory employees' union.
- August 9, 1945: Revised summary of exempt employees' survey completed.
- September 21, 1945: Work stoppages began in bituminous coal mines in eight States involving United Clerical, Technical, and Supervisory Employees' Union.
- September 24, 1945: As a result of a meeting of supervisors' locals held in South Fork on Sunday, September 23, no fire bosses or inside foremen reported for work at Pennsylvania Coal & Coke Corp.'s Nos. 3 and 8 mines which were closed down. Other mines in this area reported absence of supervisory employees.
- September 25-28, 1945: Three-day meetings held between subcommittee of operators and miners.
- September 27, 1945: Trial examiner's hearing began, Pittsburgh, Pa., September 27, 1945. Oral argument before NLRB, Washington, D. C., October 23, 1945. Brief filed by National Coal Association, case No. 6-R-1191, *Jones & Laughlin Steel Corp. v. U. C. T. S., District 50, U. M. W. of A.*
- September 28, 1945: Shut-down had spread to 87 mines, employing more than 36,000 men and producing almost 200,000 tons of coal. This strike later grew to involve 200,000 men and lasted until October 22. It cost the country approximately 19,000,000 tons of coal.
- September 28-29, 1945: Letters reviewing immediate situation addressed to Secretary of Labor and various other representatives of interested Government agencies by subcommittee of operators' negotiating committee and exchanges of telegrams by Mr. Van Horn and Mr. Lewis.

- October 2, 1945: Report of committee to the Bituminous Coal Operators of the United States of America, upon the pending controversy over the unionization of foremen and supervisors.
- October 6-15, 1945: Government entered supervisory employees dispute. The following persons attended a meeting with Secretary of Labor Schwollenbach at the Department of Labor in Washington. For the operators: Messrs. O'Neill, Moses, Burke, McAuliffe, Howard, Campbell, Spencer, and Ardigo. For the mine workers: Messrs. Lewis, O'Leary, Tetlow, Owens, Mark, Caddy, Titler, Mates, Gasaway, McAlpine, and Condra.
- October 17, 1945: Mr. Lewis instructed all miners to return to work Monday, October 22, 1945.
- December 6, 1945: A National Labor Relations Board issued decision in Packard Motor Car Co. case No. 7-C-1452, adopting recommendation contained in intermediate report of NLRB trial examiner, dated July 18, 1945, following hearing at Detroit, Mich., on July 9, 1945, on complaint of unfair labor practice charges brought against company on June 28 on charges filed by the Foremen's Association of America on June 8, 1945. No oral argument held. Packard Motor Co. directed to hold election to determine appropriate bargaining unit for supervisory employees.
- February 2, 1946: National Labor Relations Board dismissed motion of Industrial Collieries Corp. to dismiss petition filed against it by United Clerical, Technical, and Supervisory Employees' Union, case No. 6-R-1074, and directed that an election be held to determine the appropriate bargaining unit for supervisory employees. Hearing held before NLRB trial examiner at Johnstown, Pa., on May 11, 1945.
- March 7, 1946: National Labor Relations Board upheld unions' contention that supervisory employees can organize regardless of whether or not their union may be affiliated with rank-and-file union, in the matter of *Jones & Laughlin Steel Corp. v. United Clerical, Technical, and Supervisory Employees' Union, District 50, UMW*, case No. 6-R-1191, on charges filed by the union June 6, 1945. Hearing held before trial examiner of NLRB at Pittsburgh, Pa., September 27 to October 8, 1945, and oral argument held in Washington before the Board on October 23, 1945.
- March 8, 1946: Sixty-man policy committee of bituminous coal operators, meeting at the Shoreham Hotel, Washington, D. C., adopted a resolution instructing the operators' negotiating committee to continue opposition to recognition of a supervisory employees' union in the forthcoming wage conference.
- March 12, 1946: United Mine Workers of America included request for adjustment of controversy affecting supervisory, clerical, and technical employees of bituminous coal mines in its demands presented at opening session of the wage conference.
- March 18, 1946: Statement issued by Senator Edward R. Burke, president, Southern Coal Producers Association, on behalf of bituminous coal operators, at the wage conference, Shoreham Hotel, Washington, D. C.
- March 27, 1946: Letter, United Clerical, Technical, and Supervisory Employees' Division, District 50, U. M. W. of A., advised all clerical, technical, and supervisory employees to continue to work after April 1, 1946.
- May 14, 1946: Statement of operators regarding supervisory employees' issue made during wage conference proceedings.
- May 15, 1946: U. M. W. of A. reported to have offered to allow in the new contract the exemption of one mine superintendent, one mine manager, one foreman underground, and two assistant foremen underground. This number would be the same in each mine regardless of size.
- May 21, 1946: Executive Order No. 9728 issued by President Truman authorizing the Secretary of the Interior to take possession of and operate certain coal mines.
- May 27, 1946: Following election on April 1, 1946, at the mines of Jones & Laughlin Steel Corp., National Labor Relations Board certified United Clerical, Technical, and Supervisory Employees' Union as appropriate bargaining unit; case No. 6-R-1191.
- May 28, 1946: National Labor Relations Board issued decision in case No. 9-C-2037, Eastern Gas & Fuel Associates, adopting recommendation of NLRB trial examiner in his intermediate report dated February 13, 1945, that United Clerical, Technical, and Supervisory Employees' Union be designated as appropriate bargaining unit and directing an election to be held at the mines of that company. Trial examiner's report following hearing at Beckley, W. Va., November 28-30, 1944, on NLRB complaint issued November 7, 1944, on charges

filed by United Clerical, Technical, and Supervisory Employees' Union September 9, 1944.

May 29, 1946: Krug-Lewis agreement signed by Secretary of the Interior Krug, for the Government, and Mr. John L. Lewis, for the United Mine Workers of America, today, included the following provision regarding supervisory employees:

#### "11. SUPERVISORS

"With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board."

June 10, 1946: On behalf of the bituminous coal operators, Mr. Van Horn, chairman of the conference, addressed a letter to Mr. Willard Wirtz, Chairman of the National Wage Stabilization Board (successor to the War Labor Board), requesting general authorization to adjust wages and salaries of mine employees who are not members of the United Mine Workers of America and who are subject to the jurisdiction of the Stabilization Board.

June 13, 1946: Injunction suit brought against United Mine Workers of America, the National Labor Relations Board, Secretary of Interior Krug, and Coal Mines Administrator Ben Moreell by Jones & Laughlin Steel Corp., civil action case No. 35308, in the District Court for the District of Columbia.

June 13, 1946: Complaint for declaratory judgment and injunction filed against J. A. Krug, Secretary of the Interior, and Ben Moreell, Coal Mines Administrator, in the District Court for the District of Columbia, by Allegheny Pittsburgh Coal Co. et al., case No. Civil Action 35320.

June 14, 1946: National Wage Stabilization Board approved application of bituminous coal operators filed June 10, 1946, for adjustment of wages and salaries of supervisory employees within the jurisdiction of the Board.

June 18, 1946: Treasury Department issued instructions directing adjustment in wages and salaries of coal mining supervisory employees within the jurisdiction of the Commissioner of Internal Revenue.

July 8, 1946: Messrs. O'Neill, Burke, and Moses, operators' negotiating subcommittee on exempt employees, met with Admiral Ben Moreell, Coal Mines Administrator, in his office in Washington, together with representatives of the United Clerical, Technical, and Supervisory Employees' Union.

July 9, 1946: Operators' subcommittee on exempt employees reported to operators' negotiating committee at Shoreham Hotel, Washington, D. C.

July 10, 1946: Operators' subcommittee on exempt employees and union representatives again met with Admiral Moreell at his office, and he submitted a proposal regarding a solution of the supervisory employees' issue. Messrs. Harvey, Sharpe, and Kruper were also present for Jones & Laughlin Steel Corp.

July 11-15, 1946: Continuation of meetings of operator representatives held at Shoreham Hotel, Washington, and subsequent meetings of the operators' subcommittee on exempt employees with Admiral Morrell and representatives of United Clerical, Technical, and Supervisory Employees' Union on July 11 and 13. Mr. Moses and Senator Burke withdrew from negotiations on July 12, 1946.

July 11, 1946: NLRB hearing in Johnstown re Pennsylvania Coal & Coke Co.

July 17, 1946: On behalf of the United States Government presently operating the bituminous coal mines, Admiral Ben Moreell, Federal Coal Mines Administrator, signed agreements with United Clerical, Technical, and Supervisory Employees' Union, District 50, UMWA, covering wages and working conditions of supervisory, clerical, and technical employees of Jones & Laughlin Steel Corp., and made application to the National Wage Stabilization Board for changes in terms and conditions of employees covered by the agreements.

July 30, 1946: National Wage Stabilization Board issued order and opinion granting Admiral Morrell's application of July 17 for approval of changes in wages and other terms and conditions of employment affecting certain supervisory employees of the Jones & Laughlin Steel Corp., case No. 1321-13-55.

August 12, 1946: Sixth Circuit Court of Appeals granted petition of the National Labor Relations Board for enforcement of the Board's order of December 6, 1945, in the Packard Motor Car Co. case No. 7-C-1452.

August 13, 1946: CMAN Order No. 9, issued by Capt. N. H. Collisson, Deputy Director, Coal Mines Administration, concerning terms and conditions of employment of clerical and technical employees of Jones & Laughlin Steel Corp.



- August 14, 1946: CMAN Order No. 10, issued by Capt. N. H. Collisson, Deputy Director, Coal Mines Administration, concerning terms and conditions of employment of clerical and technical employees of Industrial Collieries Corp.
- August 16, 1946: Petition for injunction filed in district court by Jones & Laughlin Steel Corp., civil action No. 35508, denied without prejudice by justice of the district court and ordered to be set down for argument in the Circuit Court of Appeals for the District of Columbia. Following hearing on request for temporary restraining order, June 14, which was denied June 15, argument was held in district court on June 25 and preliminary injunction denied the following day, June 26, 1946.
- August 17, 1946: CMAN Order No. 12, issued by Capt. N. H. Collisson, Deputy Director, Coal Mines Administration, concerning terms and conditions of employment of supervisory employees of Jones & Laughlin Steel Corp.
- October 15, 1946: As a result of an election held September 9, 1946, upon order of the National Labor Relations Board August 28, 1946, at which time motion was also denied by the Board to dismiss petition of the Ford Collieries Co., case No. 6-R-1213, United Clerical, Technical, and Supervisory Employees' Union, was certified by the NLRB as the appropriate bargaining unit for supervisory employees at the mines of said company. Hearing originally held before trial examiner of NLRB in Pittsburgh July 8-9, 1946.
- October 1946: National Labor Relations Board also certified United Clerical, Technical, and Supervisory Employees' Union as appropriate bargaining unit at Ehrenfeld Nos. 3 and 8 mines of Pennsylvania Coal & Coke Corp., following election held in September 1946.
- December 16, 1946: Opinion of the justice of the circuit court of appeals affirmed judgment sustaining defendant's motion to dismiss complaint in Jones & Laughlin Steel Corp. case No. 35308, following argument in United States Circuit Court of Appeals of the District of Columbia on November 12, 1946.
- December 31, 1946: National Labor Relations Board issued decision upholding previous decisions to recognize United Clerical, Technical, and Supervisory Employees' Union as appropriate bargaining unit for supervisory employees at the mines of Jones & Laughlin Steel Corp. case No. 6-C-1085, in accordance with recommendations of trial examiner in his intermediate report dated October 1, 1946, finding Jones & Laughlin Steel Corp. guilty of violation of section 8 of the Wagner Act. Hearing before NLRB trial examiner held at Pittsburgh, Pa., September 11, 1946, on complaint issued by NLRB regional director August 26, 1946, on charges filed by United Clerical, Technical, and Supervisory Employees' Union on August 22, 1946, for failure of company to carry out agreement of July 17, 1946, entered into between the union and Government.
- March 10, 1947: Supreme Court affirmed enforcement of judgment upon writ of certiorari in Packard Motor Co. case No. 7-C-1452.
- April 7, 1947: Agreement made between Coal Mines Administrator and United Clerical, Technical, and Supervisory Employees' Union regarding supervisory employees at the Berry and Francis mines of the Ford Collieries Co., Curtisville, Pa.
- April 16, 1947: National Labor Relations Board denied the motion filed by Ford Collieries Co. to withdraw certification and dismiss petition, case No. 6-R-1213, on March 29, 1947.
- May 6, 1947: Jones & Laughlin Steel Corp. filed petition for writ of certiorari with the Supreme Court, civil action No. 35308.
- May 7, 1947: President Truman appointed 11 labor relations experts as a special panel from which Secretary of Labor Schwollenbach would choose 3 as a board to pass on any contracts between the United Mine Workers of America and the Government involving supervisory employees.
- May 16, 1947: A special board of the three following persons were appointed by Secretary of Labor to approve contracts between the Government and United Clerical, Technical, and Supervisory Employees for Ford Collieries Co., Pennsylvania Coal & Coke Corp., Buckeye Coal Co., and Wendel Coal Co.: Messrs. Lloyd Garrison, William Leiserson, and Edward McGrady.
- May 17, 1947: President Truman approved an order issued by the aforementioned special board directing changes in terms and conditions of employment at the Francis and Berry mines of Ford Collieries Co.
- May 19, 1947: Supreme Court upheld the right of the Government to recognize a union of supervisory employees. Jones & Laughlin Steel Corp., civil action No. 35308.
- May 20, 1947: During the course of wage negotiations held at the Shoreham Hotel, Washington, D. C., at this period, the operators advanced the following

offer concerning supervisory employees in their proposals in the form of amendments to the provisions carried forward by the national bituminous coal wage agreement of April 11, 1945:

"SUPERVISORS

"The operators will agree to the inclusion of the present exemption clause in the 1941 agreement and also ask that a clarification of language be made in the contract to clearly indicate the intent and meaning of the exemption clause."

The mine workers asked for retention of the provisions of the Krug-Lewis agreement providing for unionization of supervisors in accord with the policies of National Labor Relations Board.

May 24, 1947: The following orders were issued by Coal Mines Administrator Collisson directing that the terms of the several agreements negotiated between the Government and the United Clerical, Technical, and Supervisory Employees' Union be put into effect at the mines of the companies involved:

CMAN-17—Berry and Francis mines, Ford Collieries Co. Agreement dated April 7, 1947.

CMAN-18—Nemacolin mine, Buckeye Coal Co. Agreement dated April 26, 1947.

CMAN-19—Nos. 1 and 2 Mines, Wendel Coal Co. Agreement dated April 26, 1947.

CMAN-20—Ehrenfeld Nos. 3 and 8 Mines, Pennsylvania Coal & Coke Corp. Agreement dated April 26, 1947.

June 23, 1947: Public Law 101, the Labor-Management Relations Act, 1947 (Taft-Hartley Act), effective this date, contains the following provisions governing supervisory employees:

"Sec. 2. (11) The term 'supervisors' means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

\* \* \* \* \*

"Sec. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

June 27, 1947: Termination of Government control and possession of all bituminous coal mines.

July 8, 1947: Agreement signed this date by operator and United Mine Worker representatives contained the following section:

"EXEMPTIONS UNDER THIS AGREEMENT

"It is the intention of this Agreement to reserve to management and except from this agreement an adequate force of supervisory employees to effectively conduct the safe and efficient operation of the mines and at the same time, to provide against the abuse of such exemptions by excepting more such employees than are reasonably required for that purpose.

"Coal inspectors and weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering, and technical forces of the operator, working at or from a district or local mine office are exempted from this agreement.

"All other employees working in or about the mines shall be included in this agreement except essential supervisors in fact such as: Mine foremen, assistant mine foremen who, in the usual performance of their duties, may make examinations for gas as prescribed by law, and such other supervisors as are in charge of any class of labor inside or outside of the mines and who perform no production work.

"The union will not seek to organize or ask recognition for such excepted supervisory employees during the life of this contract.

"The operators shall not use this provision to exempt from the provisions of this agreement as supervisors, more men than are necessary for the safe and efficient operation of the mine, taking into consideration the area covered by the workings, roof conditions, drainage conditions, explosion hazards, and the ability of supervisors, due to thickness of the seam, to make the essential number of visits to the working faces as required by law and safety regulations.

"Disputes arising under this section shall be referred to a joint board of review consisting of two representatives of the union and two representatives of the operators whose decision shall be final and binding on the parties."

July 8, 1947: Appointment of the following representatives to the joint board of review on exemptions under the terms of the 1947 agreement. For the operators: Charles O'Neil, Harry M. Moses. For the United Mine Workers: John O'Leary, John McAlpine.

July 31, 1947: United Clerical, Technical and Supervisory Employees' Union, Division of District 50, United Mine Workers of America, was dissolved and replaced by the Clerical, Technical and Supervisory Association of America with headquarters in Morgantown, W. Va. Mr. Samuel Willetts of Morgantown, a former field representative of the United Clerical, Technical and Supervisory Employees' Union, was made president.

January 15, 1948: Appointment of Mr. Paul K. Reed as successor to Mr. John O'Leary, deceased, as UMW representative on the joint board of review on exemptions. Existing contracts provide this appeal board to decide any dispute with regard to exemptions under the terms of the contract.

May 5, 1948: Initial meeting of joint board of review on exemptions held at 45 Rust Building, Washington, D. C. Rules of procedure adopted.

May 12 to 13, 1948: Meeting of joint board of review on exemptions held at 45 Rust Building, Washington, D. C. Fire boss hearing held on May 12. Twelve cases. 32 present.

June 25, 1948: 1948 wage agreement signed by bituminous coal operator and United Mine Worker representatives carried forward terms and provisions "of the Appalachian joint wage agreement (dated June 19, 1941), effective April 1, 1941, to March 31, 1943, the supplemental 6-day work week agreement, the national bituminous coal wage agreement (dated April 11, 1945), effective April 1, 1945, the national bituminous coal wage agreement of 1947 (dated July 8, 1947), effective July 1, 1947, and all the various district agreements executed between the United Mine Workers of America and the various operators and coal associations (based upon the aforesaid basic agreements) as they existed on June 30, 1948, subject to the terms and conditions of this agreement and as amended, modified, and supplemented \* \* \*"

June 30, 1948: Terms of the members of the joint board of review expired upon termination of the 1947 agreement.

Between July 29 and September 1, 1948: Appointment of Messrs. John Owens and Anthony Boyle to succeed Messrs. Reed and McAlpine as United Mine Workers representatives on the joint board of review on exemptions.

August 19, 1948: Mr. O'Neill and Mr. George Love met with Mr. Owens at the United Mine Workers of America headquarters in Washington.

September 28, 1948: Messrs. M. L. Markel and George Shoemaker, successor operator representatives on the joint board of review on exemptions, met at 45 Rust Building, Washington, D. C., prior to a conference with Messrs. Owens and Boyle, mine workers' representatives, at United Mine Workers of America headquarters.

EXHIBIT C.—Summary of reported supervisory strikes which occurred at bituminous coal mines during the period from Aug. 1 to Dec. 31, 1945, inclusive

District No.		August	September	October	November	December	Total
1 (central Pennsylvania).	Number of strikes.....	(1)	24	65	(1)	(1)	89
	Number of men involved.....	-----	9,207	17,798	-----	-----	27,005
	Man-days lost.....	-----	47,203	250,211	-----	-----	297,414
	Production lost (net tons).....	-----	229,093	1,194,849	-----	-----	1,423,942
2 (western Pennsylvania).	Number of strikes.....	6	47	207	(1)	(1)	260
	Number of men involved.....	1,608	22,964	50,866	-----	-----	75,438
	Man-days lost.....	8,370	114,231	802,429	-----	-----	925,030
	Production lost (net tons).....	39,650	571,943	4,320,445	-----	-----	4,932,038



EXHIBIT C.—Summary of reported supervisory strikes which occurred at bituminous coal mines during the period from Aug. 1 to Dec. 31, 1945, inclusive—Continued

District No.		Aug- ust	Septem- ber	October	Nov- ember	Dec- ember	Total
3 (northern West Virginia).	Number of strikes.....	(1)	25	85	(1)	(1)	110
	Number of men involved.....		7,553	18,243			25,796
	Man-days lost.....		30,671	274,153			304,824
	Production lost (net tons).....		233,250	1,841,390			2,074,640
4 (Ohio).....	Number of strikes.....	(1)	(1)	94	(1)	(1)	94
	Number of men involved.....			12,614			12,614
	Man-days lost.....			173,911			173,911
	Production lost (net tons).....			1,216,902			1,216,902
6 (West Virginia Panhandle).	Number of strikes.....	(1)	10	13	(1)	(1)	23
	Number of men involved.....		2,492	2,672			5,164
	Man-days lost.....		14,952	46,234			61,186
	Production lost (net tons).....		73,650	225,955			299,605
7 (southern low volatile West Virginia-Virginia).	Number of strikes.....	(1)	1	155	(1)	(1)	156
	Number of men involved.....		581	35,285			35,866
	Man-days lost.....		1,162	368,863			370,025
	Production lost (net tons).....		6,000	1,716,665			1,722,665
8 (southern high volatile Virginia-West Virginia, Tennessee and Kentucky).	Number of strikes.....	(1)	7	451	6	1	465
	Number of men involved.....		1,335	66,640	1,025	135	69,135
	Man-days lost.....		3,390	948,999	6,765	540	959,694
	Production lost (net tons).....		12,720	4,908,755	29,400	3,620	4,954,495
11 (Indiana)....	Number of strikes.....	(1)	(1)	37	(1)	(1)	37
	Number of men involved.....			6,941			6,941
	Man-days lost.....			84,345			84,345
	Production lost (net tons).....			970,100			970,100
13 (Alabama)...	Number of strikes.....	(1)	(1)	9	(1)	(1)	9
	Number of men involved.....			1,264			1,264
	Man-days lost.....			13,289			13,289
	Production lost (net tons).....			52,000			52,000
Total for above districts.	Number of strikes.....	6	114	1,116	6	1	1,243
	Number of men involved.....	1,608	44,132	212,323	1,025	135	259,223
	Man-days lost.....	8,370	211,609	2,962,434	6,765	540	3,189,718
	Production lost (net tons).....	39,650	1,126,656	16,447,061	29,400	3,620	17,646,387

<sup>1</sup> None reported.

#### EXHIBIT D.

##### OBLIGATION TAKEN BY NEW MEMBERS OF UNITED MINE WORKERS OF AMERICA

I do sincerely promise, of my own free will, to abide by the laws of this union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

To this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.

(Authority: Taken from constitution of the International Union, United Mine Workers of America, effective November 1, 1948, adopted at Cincinnati, Ohio, October 11, 1948.)

Senator DONNELL. Mr. Haley, I would like to ask you a very few questions. One relates to the obligation taken by new members of

the United Mine Workers of America. I observe in the opening clause or sentence, rather, that obligation, this language:

I do sincerely promise, of my own free will, to abide by the laws of this union.

Is there anything in this oath that makes his obligation subject to the laws of the United States, such as to say that he promises to abide by such laws of the union as are in consonance with the laws of the United States?

Mr. HALEY. I do not find any such provision.

Senator DONNELL. There is nothing in there to that effect, is there?

Mr. HALEY. That is correct; there is nothing.

Senator DONNELL. In other words, this is an absolute promise to abide by the laws "of this union," and I am not talking about the United States; it means the United Mine Workers of America in all events; that is the interpretation that I place upon it. Is that your interpretation or not?

Mr. HALEY. That is all there is to it.

Senator DONNELL. Yes, sir.

Mr. HALEY. Yes.

Senator DONNELL (reading):

To bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America—

is the next clause.

You said, I believe, that a man is expected to raise his right hand when he takes this obligation.

Mr. HALEY. That is what the constitution specifically says.

Senator DONNELL. Does it use that language, "raise your right hand"?

Mr. HALEY. Yes.

Senator DONNELL. Does it say whether he invokes the Deity in making the obligation or does it just—

Mr. HALEY. It is silent on that point.

Senator DONNELL. It is silent on that point.

Now, farther down—well, let us take this up, this clause that I just read,

to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America.

There is no obligation, namely, to keep inviolate such principles of the United Mine Workers of America as are concerned with the Constitution of the United States of America. There is nothing in the oath about that?

Mr. HALEY. There is nothing in the obligation about that.

Senator DONNELL. No, sir.

The obligation proceeds a little farther down—

to defend on all occasions and to the extent of my ability the members of our organization.

That does not contain any qualification as to the nature of the defense or in what respects his ability is to be exercised, whether it is in mass picketing or nonmass picketing, or violence or persuasion, does it?

Mr. HALEY. No, sir; it does not.

Senator DONNELL. There is no limitation whatsoever.

Mr. HALEY. No, sir; none whatever.

Senator DONNELL. It proceeds farther down—

That I will assist all members of our organization to obtain the highest wages possible for their work.

There is nothing said in there about it being the highest wage consistent with justice and equity or consistent with the economic position of the Nation or of the employer, is there?

Mr. HALEY. No, sir.

Senator DONNELL. It is "the highest possible wages for their work."

Then, the next clause is—

That I will not accept a brother's job who is idle for advancing the interests of the union or seeking better remuneration for his labor.

In other words, if a man goes out on strike this man promises that under no conditions will he accept that job. That is correct; is it not?

Mr. HALEY. That is correct.

Senator DONNELL. Suppose, for instance, in your mines that a situation should exist in which the mines were suddenly confronted by a flood situation where the mines were being flooded, and it was essential that somebody step in and take the place of strikers.

Under this there is no exception made for that kind of case, is there, so that the person who takes this obligation to step in and perform that work—

Mr. HALEY. Under the obligation there is certainly no exception made for that.

Senator DONNELL. Is there anywhere else in the laws of the union that you know of?

Mr. HALEY. Not that I know of, but I do know in cases of emergency, and even on strike, certain types of employees are permitted to stay in the mines under certain conditions.

Senator DONNELL. But the obligation that sets forth this here does not say anything about such exception, does it?

Mr. HALEY. That is correct. The obligation does not make any such exception.

Senator DONNELL. Then, a little further on—

and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. It is pretty difficult to see any stronger obligation to strike than that, is it not?

Mr. HALEY. I do not think it would be possible to state one.

Senator DONNELL. Yes. And he promises to cease work regardless of the justice of the demands of the organization, regardless of his own conscientious scruples at the time. He promises to cease work at any time he is called upon by the organization to do so. Who is the organization? Are they the officers or what is it? Do you know whether it involves a vote, necessarily, by the persons in the union?

Mr. HALEY. No, of course I know it does not involve a vote, and the organization is the international union with its headquarters here.

Senator DONNELL. Yes.

Now, they have how many people, if you know, on this board down here in Washington headed up by John L. Lewis which decides whom to call upon on behalf of the organization to cease work?

Mr. HALEY. I do not know how many, but I know it would be very few who would make the decision, of course.

Senator DONNELL. Yes.



Then, the concluding portion of the oath :

To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.

Mr. Haley, you referred at one place, page 5 of your statement, to the effect of a certain injunction on a Nation-wide shut-down, and I may say that it has been said in substance here a number of times before this committee, that the injunction has had no effect on the coal strike last year insofar as the settlement was concerned.

Now, you say in here in your statement at page 5 near the bottom, where you refer to the Nation-wide strike, you say—

The Nation-wide strike in the bituminous coal industry in 1948 lasted for 40 days before it was terminated as a result of the injunction which was issued on petition of the Attorney General, acting at the direction of the President of the United States.

Is that a correct statement of fact, in your judgment ?

Mr. HALEY. That is a correct statement of facts, and I can substantiate it. I have read in the press those observations made by Mr. Green and others, and they are certainly difficult for me to understand in view of the factual situation.

Mr. John L. Lewis, as a result of that injunction, sent several telegrams, the final one being this one, as reported in the New York Times of April 21, 1948. The telegram says:

We are today executing bonds perfecting appeal. I do hope you will convey to each member my wish that they immediately return to work.

That was the third of the telegrams sent by Mr. Lewis, and a mere reflection on the situation would indicate that he would, of course, do exactly that, because he was in court, and his attorneys were having to go down in court and show how he had purged himself of the contempt. So it is rather odd to hear remarks from responsible people to the effect that the injunction section of the Labor-Management Relations Act had no bearing on the termination of that strike.

Senator DONNELL. Yes. What did that telegram say again? Will you read it, please?

Mr. HALEY. This was one that was sent to the district presidents. It says:

We are today executing bonds perfecting appeal. I do hope you will convey to each member my wish that they immediately return to work.

Senator DONNELL. Was that followed by a return to work?

Mr. HALEY. Yes, yes that was.

Senator DONNELL. And they had not returned to work before that wire went out, is that right?

Mr. HALEY. Some of them had gone back to work as a result.

Senator DONNELL. I mean the great bulk of them.

Mr. HALEY. Some of them had gone back to work as a result of earlier telegrams of an earlier nature, going to other unions.

Senator MORSE. I was going to ask you a question, but you answered my question which was, did they go back to work immediately.

Mr. HALEY. Yes, sir; the miners were back in full force on April 23. There was a substantial return on the 22d, and the full force on the 23d; yes sir.

Senator MORSE. Prior to the sending of that telegram did the operators and Mr. Lewis negotiate any agreement?

Mr. HALEY. About that time or somewhat earlier than that, Mr. Bridges, Senator Bridges, had been appointed the third trustee, but that was the only——

Senator MORSE. Was an agreement reached as a result of that appointment?

Mr. HALEY. No; no agreement was reached as a result of that appointment. He was merely appointed. That was the agreement, that they had agreed to a third trustee.

Senator DONNELL. What was the date? What was the date of the telegram from which you read from the New York paper?

Mr. HALEY. That was sent out by the United Mine Workers by Mr. Lewis on April 20.

Senator DONNELL. April 20, 1948?

Mr. HALEY. 1948.

Senator DONNELL. Yes, sir.

Mr. HALEY. That is correct.

Senator MORSE. Was the appointment of Senator Bridges the thing that broke the deadlock between the operators and the miners?

Mr. HALEY. Well, it broke the deadlock about their inability to agree on a third trustee.

Senator MORSE. And that all happened before they went back to work, did it not?

Mr. HALEY. Yes, that all happened——

Senator MORSE. That is all.

Mr. HALEY. It happened before, it happened before the injunction was issued, too, and the miners did not immediately return to work when the announcement was made of the appointment of the third trustee.

Senator DONNELL. And they did not go to work until after the issuance of the injunction?

Mr. HALEY. That is correct.

Senator DONNELL. Then, as you indicated, Mr. Lewis wired that he was filing appeal bonds, and so forth, and hoped they would go back to work.

Mr. HALEY. That is correct.

Senator DONNELL. Yes, sir.

How long have you been general counsel for the National Coal Association?

Mr. HALEY. I beg your pardon?

Senator DONNELL. How long have you been general counsel of the National Coal Association?

Mr. HALEY. Since last fall, about 6 months.

Senator DONNELL. Last fall.

Mr. HALEY. Prior to that I was attorney——

Senator DONNELL. Have you come in contact with Mr. John L. Lewis at any time?

Mr. HALEY. No, sir; I did not.

Senator DONNELL. Do you know, generally speaking, from the activities of your association and from its records and information that you have received of prior contacts with Mr. Lewis, do you not——

Mr. HALEY. I should state that the National Coal Association as such does not negotiate the wage agreement with Mr. Lewis. There is a special committee designated.

Senator DONNELL. Yes.

Mr. HALEY. There is a special committee designated to negotiate with Mr. Lewis.

Senator DONNELL. Well, you generally know something of Mr. Lewis, and what he did in the coal-mine strikes? That is, as a matter of general public knowledge, you know that, do you not?

Mr. HALEY. Oh, yes, certainly.

Senator DONNELL. I want to ask your opinion about a question in a moment, but first I would like to know just how much experience you have had in the practice of law or any line of business.

Mr. HALEY. Well, I passed the bar in 1936, and I went with the National Coal Association in 1937, and I have been actively engaged in representing the coal industry in various matters since that time.

Senator DONNELL. Approximately 12 years that you have been so engaged?

Mr. HALEY. That is correct.

Senator DONNELL. I want to ask you this: Take a bill such as this S. 249, the Thomas measure, which provides that—

Whenever the President finds that a national emergency is threatening or exists because a stoppage of work has resulted or threatens to result from a labor dispute—including the expiration of a collective-bargaining agreement—in a vital industry which affects the public interest, he shall issue a proclamation to that effect and call upon the parties to the dispute to refrain from a stoppage of work or if such stoppage has occurred, to resume work and operations in the public interest.

Would you be kind enough to express your opinion as to the efficacy of such a provision with respect to such a gentleman as Mr. Lewis? I am going to speak plainly because I mean it plainly.

Do you think that a mere call upon the parties to the dispute to “refrain from a stoppage of work,” or “to resume work and operations,” do you think that would be effective with respect to a man who has shown the characteristics that he has?

Mr. HALEY. I think, to state the question is to answer it, obviously.

Senator DONNELL. What is your answer?

Mr. HALEY. That is my answer, and I would like to state, too——

Senator DONNELL. Your answer is what?

Mr. HALEY. My answer is that such a provision, of course, would really be ineffective and meaningless. Doing something like that was not effective with President Truman in 1946, and something like that, and even more, failed four times during the war, in dealing with Mr. Lewis.

Senator DONNELL. Yes.

Now, if there had been enacted into law the further provisions of section 302 of the Thomas bill, generally speaking along these lines:

After issuing such a proclamation—

that I have just referred to—that is, a proclamation to the effect that the emergency exists, and a call upon the parties to refrain from a stoppage of work, and so forth, after issuing such a proclamation—the President shall promptly appoint a board to be known as an “Emergency Board”—

which Board is to make a report in not more than 25 days after the issuance of the proclamation and after the proclamation has issued, and 5 days thereafter—

the parties to the dispute shall continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of a dispute unless a change therein is agreed to by the parties.



In your judgment, from your observation of the conditions in the coal industry, do you think that a provision such as I have quoted, obligating the parties to the dispute to continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute, do you think that would be effective unless there were put some means of enforcing that obligation of the parties to return to work?

Mr. HALEY. I do not think it would be effective.

Senator DONNELL. Yes.

Now, may I ask you this: It has been pointed out a number of times, and we have had quite a debate here from time to time in this committee on this proposition, it has been pointed out that the Taft-Hartley Act contains a provision, section 208, to the general effect that—

upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any District Court of the United States having jurisdiction of the parties to enjoin such strike or lockout, or the continuing thereof, and if the court finds that such threatened or actual strike or lockout affects an entire industry or a substantial part thereof—

and so forth—

and if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof.

It has also been pointed out that in this same bill, although this authority of the jurisdiction of the court to enjoin the strike or lockout is set forth, that there is a distinct and clear provision to the effect that—

nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee be an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by any employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

I want to ask you, as a lawyer, and as one familiar with industry, whether or not there is a difference in the legal effect between the stopping of work by one individual and a concerted stoppage of work by numbers of individuals, perhaps, acting under the provisions of this oath to which you refer, namely, "That I promise to cease work at any time I am called upon by the organization to do so."

Is there a difference between the stoppage on the part of the individual, and a concerted stoppage pursuant to such provision of the oath?

Mr. HALEY. Of course, there is a very distinct legal difference.

Senator DONNELL. In other words, one act may be entirely legal which, if committed by an individual or a number of individuals separately, would be thus characterized; but if committed in concert may be an unlawful conspiracy and probably punishable by the law. That is correct, is it not?

Mr. HALEY. Yes.

Senator PEPPER. Will the Senator yield at that point?

Senator DONNELL. If the Senator would bear with me, I would like to pursue this point for just a moment.

Mr. Haley, I appreciate the fact that this bill, this Thomas bill, does not provide any penalty or anything, any force of any kind to

compel a man as a party to a dispute to continue or resume work and operations under the terms and conditions of employment which were in effect immediately prior to the beginning of the dispute.

But suppose that there were a provision in this bill which undertook to carry into effect by force the requirement that the parties shall continue or shall resume work and operations. Would not this provision in your mind be clearly violative of the Constitution of the United States as to constituting involuntary servitude? Is not that true?

Mr. HALEY. I think so; I think so, Senator.

Senator DONNELL. So that we have a bill, then, that makes it the legal obligation, I take it we would agree, that makes it the legal obligation of the parties to the dispute to refrain from a stoppage of work or if such stoppage has occurred, to resume work and operations, which are recited, which, although the provision cannot be made effective because there is no punishment provided, nevertheless, it undertakes to impose a legal obligation which in itself is violative of the Constitution, and would, if put into effect by compulsory process, constitute involuntary servitude. Isn't that a correct analysis of that provision?

Mr. HALEY. It appears to me to be so. I have made no exhaustive study of that problem.

Senator DONNELL. That is your present judgment from what I have recited?

Mr. HALEY. That is correct.

Senator DONNELL. Where did you take your law work?

Mr. HALEY. George Washington University.

Senator DONNELL. Here in Washington?

Mr. HALEY. That is correct.

Senator DONNELL. How long did you study there?

Mr. HALEY. I studied there from 1930 through 1936.

Senator DONNELL. Where were you born?

Mr. HALEY. Front Royal, Va.

Senator DONNELL. Front Royal, Va.?

Mr. HALEY. That is correct.

Senator DONNELL. Where is your home at this time?

Mr. HALEY. My home is in Arlington, Va.

Senator DONNELL. Arlington, Va. Where do you make your office as general counsel of your association?

Mr. HALEY. Southern Building, Washington, D. C.

Senator DONNELL. Senator Pepper, I yield the floor.

The CHAIRMAN. Senator Morse.

Senator MORSE. I have one or two questions, Mr. Chairman.

Senator DONNELL. I yield the floor to Senator Morse on our side.

Senator MORSE. Let us go back to this mining dispute that was existing at the time Mr. Lewis sent this telegram that you read into the record.

At the time of the injunction, Mr. Haley, what were the issues in dispute then pending between the operators and the mine workers?

Mr. HALEY. The alleged refusal on the part of the trustee, one of the trustees, to activate the fund, activate the United Mine Workers Welfare and Retirement Fund.

Senator MORSE. After the injunction was issued, did the miners go back to work?

Mr. HALEY. Yes; they did.

Senator MORSE. When?

Mr. HALEY. They went back to work on April 22 and 23; April 22 and 23.

Senator MORSE. When was the injunction issued?

Mr. HALEY. I have it here. I have forgotten the exact date of it—on April 3 a temporary restraining order was issued.

Senator MORSE. That is all.

Senator DONNELL. What other orders were issued after the temporary order?

Mr. HALEY. Mr. Lewis did not obey the temporary restraining order, and on April 7 a rule to show cause was issued, returnable April 12. On April 10—

Senator DONNELL. That is a rule to show cause why he should not be punished for contempt?

Mr. HALEY. That is correct.

Senator DONNELL. Very well.

Mr. HALEY. On April 10 in the office of Speaker Martin, Mr. Lewis and Mr. Van Horn met and agreed to the appointment of Senator Bridges as the third trustee.

On April 12, Mr. Lewis wired all the district presidents that pensions had been granted by the trustees to those 62 years old with 20 years service.

Senator PEPPER. What is the date, excuse me?

Mr. HALEY. On April 12. Then, on April 12, which you must remember, was the return date on the rule to show cause, Mr. Justice Goldsborough extended the temporary restraining order for another 10 days.

Senator DONNELL. In other words, it was kept in effect for 10 days more.

Mr. HALEY. That is correct.

Senator DONNELL. Very well.

Mr. HALEY. At the hearing on April 12, the union testified that Mr. Lewis had sent to all the locals early on the 12th a telegram stating that the trustee vacancy had been filled and early solution of the questions at issue may now be expected, "and your voluntary cessation of work should now be terminated."

Senator MORSE. When the men went back to work, the major issue that was pending at the time the strike occurred, in fact, had been settled, had it not?

Mr. HALEY. Yes; that is correct. That is correct, but they did not go back to work on the announcement of that settlement. The contempt trial was set for April 14, and lasted a day or two, and then the final punishment was issued.

Senator DONNELL. Just give us the recital of the chronology of it, Mr. Haley, if you have it, and what took place on and after—

Mr. HALEY. On April 14 and 15, the contempt trial took place.

Senator DONNELL. April what? What took place?

Mr. HALEY. April 14 and 15 the contempt trial took place.

Senator DONNELL. Were witnesses heard?

Mr. HALEY. Yes, sir.

Senator DONNELL. Before the court?

Mr. HALEY. Before the court, witnesses being called by the Attorney General.



Senator DONNELL. Yes.

Mr. HALEY. And on April 19, Judge Goldsborough issued his decision finding the union and its president guilty of contempt, both civil and criminal.

Senator DONNELL. Did he specify penalties at that time or did he defer action?

Mr. HALEY. He did not. He said that fines would be imposed the next day, on April 20, which he did.

Senator DONNELL. What did he propose?

Mr. HALEY. He fined Mr. Lewis \$20,000, and fined the United Mine Workers of America \$1,400,000.

On April 20 Mr. Lewis sent the telegram which I have quoted.

Senator DONNELL. Just quote that again, please.

Mr. HALEY (reading):

We are today executing bonds perfecting appeal. I do hope you will convey to each member my wish that they immediately return to work.

Senator DONNELL. Is there anything further?

Mr. HALEY. Yes, on April 21 Judge Goldsborough issued a preliminary injunction which, among other recitals of fact, stated that the "strike is still in progress on this date."

On April 23 the court postponed indefinitely the matter of punishment for civil contempt in view of the fact that 85 percent or more of the men were at work.

Senator DONNELL. That is April 23?

Mr. HALEY. Yes.

Senator DONNELL. Excuse me, go right ahead. You have not quite finished your statement.

Mr. HALEY. No, that is all.

Senator DONNELL. That was an indefinite postponement of what?

Mr. HALEY. On the punishment for civil contempt.

Senator DONNELL. Oh, yes; yes, sir.

Senator PEPPER. Excuse me. When did he say—what date was it that he issued the preliminary injunction and said that the strike was still substantially in effect?

Mr. HALEY. April 21.

Senator PEPPER. Then, on the 23d—what happened on the 23d?

Mr. HALEY. On April 23 the court postponed indefinitely the punishment for the civil contempt.

Senator PEPPER. Thank you.

Mr. HALEY. Now, I can give you briefly the number of men idle: on April 20 there were 200,000 men idle; on April 21, 250,000; and then on April 22, 50,000; and on April 23, something less than 50,000.

Senator MORSE. Mr. Haley, if I understand your testimony correctly, the fact is, is it not, that the men did not go back to work prior to the decision on the trusteeship issue?

Mr. HALEY. They did not go back prior to that nor did they go back immediately on its announcement.

Senator MORSE. They did not go back prior to it.

Mr. HALEY. They did not go back prior to it.

Senator DONNELL. And they did not go back prior to the issuance of the preliminary injunction on April 21.

Mr. HALEY. That is right.

Senator DONNELL. In other words, there were 50,000 more of them out on the 21st than the 20th.

Mr. HALEY. That is correct.

Senator DONNELL. And on the 21st the preliminary injunction was issued, the court stating that the strike was still in progress, and then on April 22, 250,000 of them had already gone out; in other words, 200,000 of them had gone back.

Mr. HALEY. That is right.

Senator DONNELL. What was the maximum number of men who were out?

Mr. HALEY. 250,000 on April 21.

Senator DONNELL. So the largest number of men out were out several days after this transaction relative to Senator Bridges, and they were out, the greatest number that were ever out on strike, were out on the day that the preliminary injunction was issued on April 21, and the next day the number fell off, there were out 200,000, 200,000 men; is that right?

Mr. HALEY. That is correct.

Senator DONNELL. Would you tell us what else happened, if anything, on April 23, after there was on that day an indefinite postponement of the punishment for the civil contempt?

Mr. HALEY. Well, I do not have the chronology here without the pleadings, but that was the end of the emergency.

Senator DONNELL. That was the end.

Mr. HALEY. Part of it. It went into another—

Senator DONNELL. So there is no further other chronological recital to have a reasonably complete picture of this situation?

Mr. HALEY. That is right.

Senator MORSE. Mr. Haley, I want to go back to my question, and I want to follow it with another one.

It is true, is it not, that prior to the Senator Bridges' decision, while the injunction was still pending, the men did not go back to work?

Mr. HALEY. That is correct.

Senator MORSE. And thereafter the men did not go back to work until after the president of the United Mine Workers ordered them back?

Mr. HALEY. That is correct.

Senator MORSE. Ergo, is it your conclusion that it was the injunction or Mr. Lewis' telegram that sent them back to work?

Mr. HALEY. That is correct, that they did not go back until after the fine was imposed.

Senator DONNELL. The fine was imposed on April 20, on Mr. Lewis, a million four hundred thousand on the United Mine Workers on the same day—that was by order of court, was it not, the fine? The court of equity, Mr. Justice Goldsborough levied the fine?

Mr. HALEY. That is right.

Senator DONNELL. On the same date after the court issued its fine order, then Mr. Lewis stated he was going to execute bonds with respect to an appeal from those fines.

Mr. HALEY. That is right.

Senator DONNELL. Obviously, he would not issue the telegram with respect to the bonds until after the fines were imposed.

Mr. HALEY. That is correct.

Senator DONNELL. On that day there were 200,000 still out, and the next day there were 50,000 more out, and then it dropped off after the preliminary injunction on April 21, and after all these prior incidents I have referred to, dropped off to 50,000 men on April 22.

Mr. HALEY. That is correct.

Senator MORSE. Do you think it was the fine that sent them back to work?

Mr. HALEY. I think the fines indirectly did it, certainly.

Senator MORSE. Who do you think indirectly paid the fines?

Mr. HALEY. Well, I think, of course, the members of the United Mine Workers.

Senator DONNELL. Do you rather surmise that Mr. Lewis might have been influenced on the 20th by the imposition of a \$20,000 fine on him and \$1,400,000 on his organization? I say, do you think that he might have been somewhat influenced by those facts, in sending the telegram of that same day, after the fines were imposed:

We are today executing bonds, and we hope you will return to work.

Mr. HALEY. I think that was a very important reason for his sending of the telegram.

Senator MORSE. You do not think, Mr. Haley, that indirectly, your clients paid that fine? [Laughter.]

Mr. HALEY. Well, I guess if we took it on back, the consumers of coal paid the fine.

Senator MORSE. I think they did. I also believe the wires sending them back to work had some effect. You cannot read the history of that case without recognizing that the injunction could have stood indefinitely and they would not have gone back to work until they got that wire.

Senator DONNELL. That is the wire of April 20 issued after the fines had been imposed, and the wire reading:

We are today executing the bonds, and we hope you are going to return to work.

Senator MORSE. It took a long time for the wire of the president of the miners to get into all of the hills of the country where the miners were telling them of the fact that they had reached an agreement. You may labor under the impression that you can mine coal with injunctions, but I do not share that impression, because I know something myself about the history of the coal mines.

Mr. HALEY. Of course, I would not want to quarrel with you.

Senator MORSE. I do not want to quarrel; I would just express a difference of opinion, Mr. Haley.

Mr. HALEY. If you cannot mine coal by the present sections of the law, I fail to see how you will mine any with the present sections of the bill.

Senator MORSE. I do not think you will mine any coal under any of the present sections of the law. I think you mined coal with a telegram that went out from the president of the miners.

Mr. HALEY. I wonder if we are even going to get a telegram under the bill being considered.

Senator DONNELL. Mr. Haley, you did not see how you would mine much coal under what is pending now, and you mean the Thomas bill?

Mr. HALEY. Yes.



Senator DONNELL. You do not think it would be a very great force in inducing the mine workers, headed particularly by Mr. Lewis, to remain at work, requested by a polite request of the President that they continue or resume work under the terms and conditions of employment which were immediately in effect preceding?

Mr. HALEY. Yes; I will put it this way.

Senator DONNELL. You agree that that sort of a statement in the law would not be very potent with respect to the United Mine Workers or Mr. Lewis?

Mr. HALEY. I will put it this way, *arguendo*.

Senator DONNELL. Do you agree with it?

Mr. HALEY. I do. *Arguendo*, I agreed with the distinguished Senator from Oregon, and I say if we concede we would not mine coal by the injunction under the present law, that we did procure a telegram, I think, and under the Thomas bill, we would not even get a telegram.

Senator MORSE. You think the law produced the telegram?

Really, you think the law produced that telegram, or Senator Bridges' decision?

Mr. HALEY. Why, I think the law produced that telegram.

Senator MORSE. I was not there, but I understand that that decision caused the greatest festivity on the part of the mine workers union. That sent them back to work more than anything else. They thought that was a pretty good decision.

Mr. HALEY. Which decision?

Senator MORSE. The Bridges' decision.

Mr. HALEY. Well, they were immediately informed of that but they did not return to work.

Senator DONNELL. When they were informed of the Bridges' decision?

Mr. HALEY. They were informed of the Bridges' appointment—well, they were informed that the Bridges' resolution—of the Bridges' resolution adoption on April 12.

Senator DONNELL. How many men were out at that time?

Mr. HALEY. I did not go back that far. The strike was in effect on April 13, although there were 230,000 idle.

Senator DONNELL. 230,000 idle. How many were there on each successive day?

Mr. HALEY. April 14, there were 70,000; April 15, 150,000; on April 16, 150,000; April 19, 90,000; and April 20, 200,000; on April 21, 250,000.

Senator DONNELL. Then, the preliminary injunction issued on April 21, the fine was imposed on April 20, the telegram sent out on April 20, and on April 22, referring to Senator Morse's statement, which is very true, that it takes some time to get back into the hills, on April 22, it dropped off to 50,000; is that correct? Is that a correct statement?

Mr. HALEY. Yes. The strike was over on the twenty-third.

Senator MORSE. I highly respect the point of view of the witness. We seem to differ on those points of view. I simply want to say, in my judgment the coal case is about as clear an example as you have in the history of the mining industry of the miners putting into practice their oft-repeated slogan, "No contract—no work."

Mr. HALEY. Well, they had a contract at that time.

Senator MORSE. They did not think so, until they got this trusteeship cleared up, and until they were perfectly satisfied that it was acceptable to the officers of the union.

Mr. HALEY. Well, they certainly in that case interpreted the contract as they saw fit. There was machinery set forth in the contract for settling such a difference.

Senator MORSE. It took a matter of days for them to get down to the rank-and-file of those workers that they had finally resulted in an agreement.

Mr. HALEY. Well, I would certainly differ with the distinguished Senator, as highly as I respect his judgment in that matter, in view of his training and background.

Senator MORSE. I understand that.

Senator HILL. May I ask a question right on that point?

Is it not true that when the fines were levied, that more miners trooped out of the mines?

Mr. HALEY. I do not think so.

Senator HILL. Well, now, you referred to the New York Times of April 21, 1948. There is a story dated:

PITTSBURGH, April 20—AP.—District presidents of United Mine Workers report tonight receipt of telegrams from the international president, John L. Lewis, asking idle miners to return to the pits immediately.

That was the telegram which you quoted several times.

Mr. HALEY. Yes.

Senator HILL. Then, the next paragraph states, and I quote:

The messages came as fresh thousands of workers trooped from the mines in protest against contempt fines totaling \$1,420,000 levied against Mr. Lewis and the United Mine Workers by the Federal court in Washington.

Mr. HALEY. That is correct; there were more out the day after the fines were imposed than at any time during the strike, but on the next day they began to return.

Senator HILL. They got the telegram.

Mr. HALEY. Yes.

Senator HILL. They got the telegram and they received it and went back to work.

Senator DONNELL. The telegram received after the fines were imposed.

Mr. HALEY. That is correct.

Senator DONNELL. And on the same day.

Mr. HALEY. On the same day, the fines were imposed.

The CHAIRMAN. Senator Pepper.

Senator PEPPER. Mr. Haley, there are two or three points about this case that you can clear up for us with your knowledge of the details.

In the first place, had the contract of the miners run out or was it in effect when the dispute occurred?

Mr. HALEY. It was in effect.

Senator PEPPER. Would the situation have been the same if the contract had expired and it had been the matter of the execution of a new contract? This was a case where it was alleged that the miners were under a contract to work for a limited period of time, was it not?

Mr. HALEY. That is correct.

Senator PEPPER. On the ground, alleging that they ceased work in violation of this contract, so the suit was to enforce a contract, as it were.

Mr. HALEY. That is correct.

Senator PEPPER. Well, let me ask this preliminary question: The contracts run for a year, do they not?

Mr. HALEY. Sometimes for a year.

Senator PEPPER. Let us assume they do run—they do run for a fixed period of time.

Mr. HALEY. That is correct.

Senator PEPPER. Let us assume under the Taft-Hartley law, I believe, you have to give notice of 60 days before you propose to terminate a contract.

Mr. HALEY. That is correct.

Senator PEPPER. Suppose notice 65 days before the expiration of one of these fixed-term contracts had been given by the proper authorities of the mine workers, that they were not going to continue work after the expiration of the contract unless they got a satisfactory contract. Would the legal situation under the Taft-Hartley law have been the same, in your opinion?

Mr. HALEY. Well, that is a very serious question, of course, and before I would answer that I would want to consider it very carefully.

Senator PEPPER. You are not in a position to say positively now, of your own opinion as a lawyer, that if it had been that kind of case this kind of injunction could have issued.

Mr. HALEY. No, I am not prepared to say that it could have. Certainly, the Attorney General would have had to make a different predicate.

Senator PEPPER. Well, if you are going to protect adequately the national health and safety which the Taft-Hartley law presumes to do, you would certainly have to plug up that loophole, would you not? Because if they wanted to quit work, why, they would just wait until the contract ran out, and then they would quit work.

Mr. HALEY. That is correct, and it might well be that that is a defect in the present statute. There has been quite a bit of discussion of it.

Senator PEPPER. But in that kind of case, they would not be violating a contract, would they?

Mr. HALEY. No, they would not.

Senator PEPPER. Well, suppose you issued an injunction which required men to work when they did not have any contract to work, for a private employer. How would you describe the work that they would have to perform under those conditions?

Mr. HALEY. Well, I think that would present a serious question to which the Senator from Missouri referred in connection with the Thomas bill.

Senator PEPPER. Does that raise the question as to whether or not, then, for all practical purposes in a government like ours which forbids involuntary servitude, that you can, by a court order, make men work against their will for a private employer?

Mr. HALEY. It would certainly present that issue.

Senator PEPPER. So you do not regard that issue as having been settled at all clearly in the law in the jurisprudence of this country.



Mr. HALEY. No, sir, I do not consider that as having been settled. I do not think it has been tested. It is really a very difficult problem, as I see it.

It is the same problem raised under the Thomas bill, exactly.

Senator PEPPER. So if the Thomas bill went on the theory that we had not so far developed any assured way of making men work, at least when their contracts were out, for private employers, even when they mined some commodity essential to the country's welfare, if it went on the theory that we had not by existing law established that you could do that by a court order that can be effectively executed and tried, to devise some alternative method, you could not say that you were certain that assumption and premise were wrong, could you?

Mr. HALEY. No, sir.

Senator PEPPER. Well, that gives a little more justification for this alternative approach in Senator Thomas' bill.

Now, then, the next point I want to clear up is, a lot of people have given me the impression that they thought, and there is a little bit to corroborate that in the injunction issued by the judge in Chicago in the ITU case—what is the name of that judge—Swygert—there was a little bit of a suggestion of that in the parties to the case in the ITU case in Chicago, where Judge Swygert issued the injunction, namely, that you cannot enjoin the workers from stopping work, but you can just issue a mandatory requirement of some sort to the union leaders.

Now, would you give us a clearcut opinion of yours as to whether or not the Taft-Hartley law in respect to the injunctive power conferred under the emergency section contemplates the issuance of the injunction against the members of the union as well as against the leaders of the union, or does it just contemplate an injunction against the leaders of the union, asking them to strike, but it contains no power to keep the workers from striking if they want to stop work?

Mr. HALEY. Well, I again would want to study that quite a bit before giving any formal statement on it. But Judge Goldsborough, you will recall in the coal case, said in effect that if the trade-union principle is to be observed and is to continue and thrive in this Nation, the unions themselves and their leaders must be responsible for the concerted acts of their members in the appropriate field, and that is what he held in the coal case.

Senator PEPPER. Well that opinion was referred to previously by some, and they seemed to get the impression that Judge Goldsborough was saying that while you were able to direct the union as to what it should do, the orders it should give, that Judge Goldsborough indicated he did not think the law permitted an order to be issued against the workers forbidding the workers themselves in stopping work.

Mr. HALEY. I agree to that.

Senator PEPPER. Is that the interpretation you put on it?

Mr. HALEY. That is the impression I get of his theory of the operation of the law.

Senator PEPPER. So then in addition to the Taft-Hartley law not being certain in your mind to have provided an affirmative remedy in case the contract ran out, you are not certain either that it provided an effective remedy against the workers themselves unless the union leaders could, by a court order, be made to effect the conduct of the worker.

Mr. HALEY. That is correct.

SENATOR PEPPER. Now, let us take a third case: Let us suppose that 65 days before a periodic contract should run out, Mr. John L. Lewis and all the executive officers, whoever the effective executives are, to whom a court would feel under the Goldsborough interpretation that it would be appropriate to issue an order, suppose they gave the 65-day notice, and they said:

Our contract will run out 65 days from now, and the cost of living has gone up. Until we get 25-percent increase in wages we simply will not be in a position to renew the contract. We want to put you on notice in ample time.

Now, on the part of hypothesis, assume that Mr. Lewis and his executives in the union went off to some quiet little island in the sunshine, and simply waited for the employer to say whether they wanted to meet those conditions; they did not do anything; they did not send any word to the workers; they did not send anything, or if you are going under the theory that they have got to bargain under the Taft-Hartley law, that he very courteously met with the management representative at the meeting appointed, at the place appointed, and very agreeably discussed the matter with them, and gave him statistics, but day after day he said, perhaps, "Gentlemen, unless you can do anything about these cost-of-living figures we just simply cannot work for less than a 25-percent increase; we are very sorry. We would like very much to continue our relations, but if you cannot meet that or give us at least 24 percent, we just will not be able to renew our contract, and we will just have to separate, unhappy as it may be for both of us."

The time for the termination of the contract arrived, and the miners, not reading about all this in the papers, and reading that there had not been any agreement for a new contract, not being any new contract, they all said, "Well, we do not have any contract; we are not going to work", and they just did not show up.

The next day, and a week passed, and they did not show up again; another week passed, and they still did not show up, so that it became pretty clear from the circumstantial evidence that "no contract, no work."

Under the Taft-Hartley law, what do you consider can be done to get them to mine coal under those circumstances?

MR. HALEY. Well again, I would say that I have not given that any thorough study. Of course, I am aware of the problem. There is no question about that, and I would tend to say that the Senator has very ably pointed up some deficiencies of the emergency section.

SENATOR PEPPER. I do that, Mr. Haley, for this reason: There are a lot of people who are out in the country, not being lawyers as you are, and not being familiar with the details of all these cases, but just being laymen down there on the street, down in my State or some other States, down in your State of Virginia, who get their information largely from the newspapers and the radio; they have been led to believe, I am afraid, even by some of the authors and proponents of the Taft-Hartley law that we have got an effective law on the statute books that will make John L. Lewis' miners mine coal, and they feel that they have got the assurance that that law exists, and it has already been tested out, and they are a little bit disappointed that some worthy Senators, like Senator Thomas here, who also has an affection for his country and concern for its interests, comes along with a bill that does

not contain this machinery which they have been led to believe was the only shield that was assuring the continuity of coal from the mines of this country.

Now, I wish it were possible for all those people to have heard your statement here this afternoon. They would see how difficult is the problem, and how defective and perforated, perhaps, the shield is, if it exists at all.

Mr. HALEY. Well, I agree with the Senator, and to the extent that anything I have said has contributed to the laying of the views on the problem, I should certainly be compelled to hasten to add that ineffective and defective as it is, it is my sincere view that from the standpoint of the national welfare, running against employer as well as employees, the present act would be more effective in that direction than would be the committee's bill.

Senator MORSE. Would the Senator from Florida let me ask a question of the Senator?

Senator PEPPER. Will you take it on your own time? We are running a little short. I will gladly defer.

Senator MORSE. I will take it on my time.

I just want to know whether the Senator means to imply by the last hypothetical question that he put to the witness that he agrees with the witness' conclusion that the injunctive provisions of the Taft-Hartley Act to not run against the workers.

Senator PEPPER. I think that is true.

Senator MORSE. You think it does not?

Senator PEPPER. I think it does not, and if it does, the advocates of it, as I have ventured to say, one day have got to meet one horn or the other of the dilemma. They have either got to recognize what Mr. Green was talking about when he said that a law that makes men work against their will is a slave labor law. They have either got to accept that horn of the dilemma or they have got to admit that that law will not make men mine coal, and if you cannot mine coal, you cannot have a continuity.

Senator MORSE. I want to say, as a matter of law, I completely disagree with the Senator from Florida. I think the law, as written, was written to apply against the workers, and I think that section of the law does apply against the workers.

Senator PEPPER. I think so, too.

Senator MORSE. I understood the Senator to say that he did not agree with me on that point.

Senator PEPPER. I think it was intended to, but I think the courts and those who have been tempted to use it have tried to avoid raising that square, clear-cut issue so that it could be decided. But I think if it does do that, if a court does do that, then the vice of the law becomes very apparent. It is slave labor if it does do that. It was intended to do that. No court has made it do that, so far as I know yet, by applying it directly to the workers, telling them if they did not stay at work as the court ordered it for them to do, they would go to jail or suffer some other penalty; and it seems to me it is a fair inference that the court apparently did not want to construe it that way, just as the Federal courts did not want to construe the expenditures section of the law, to deny a labor union the right to have a political sentiment expressed in an editorial.



To avoid its being held unconstitutional, they held that it did not apply to that kind of case. But I think the fair intent of this law is to apply to the workers. I think they intended that. I think it ought to be regarded as unconstitutional if it does carry out that intent.

Senator MORSE. You agree with me that under the language of the act, in reference to strikes, that there is a real danger that the court may seek to apply the injunctive section to the workers themselves?

Senator PEPPER. There is no doubt of that, and if it does not mean that, it does not mean anything. If you cannot make the miners mine coal it does not mean anything, and if you can make them do that, in the first place, it is involuntary servitude, in my own humble opinion.

In the second place, it is certainly what Mr. Green called it, slave labor, because you make men work against their will, without working for public interests, when they are working only for private employers.

Senator DONNELL. Will the Senator permit me to address a question to him on our time?

Senator PEPPER. Yes.

Senator DONNELL. With respect to Mr. Justice Goldsborough's decision, is the Senator under the impression that Mr. Justice Goldsborough confined his injunction, as I thought the Senator was a little while ago stating, to the union and not to the employees?

Senator PEPPER. Yes; to the union heads.

Senator DONNELL. And not to the employees?

Senator PEPPER. Yes.

Mr. HALEY. Union and officers.

Senator PEPPER. Mr. Haley agrees to that.

Senator DONNELL. May I call your attention—I think both of you gentlemen are mistaken, if I may say that, because of this fact: I have before me the decision of the court in United States versus International Union U. M. W. 22 L. R. R. M. 2005, local citation 2008.

The preliminary injunction says this:

Wherefore, upon all of the prior proceedings and upon the foregoing considerations and findings, and it appearing that unless a preliminary injunction was planted herein, the existing strike will imperil the national health and safety and will cause the plaintiff irreparable injury, for which it has no adequate remedy at law, and it further appearing that the action of the defendants may deprive the court of full and effective jurisdiction of this cause, the court being sufficiently advised in the premises, it is, by the court, this 21st day of April 1948, ordered that the defendant union and its officers, agents, servants, and employees, and all persons in active concert or participation with them, be, and they are hereby enjoined, pending the final determination of this cause, by the court, from continuing the strike now in existence at bituminous coal mines throughout the United States of America owned or operated by coal operators and associations signatory to the agreement; and that the said defendant union and its officers, agents, servants, and employees, and all persons in active concert or participation with them, they, and they are hereby, enjoined pending the final determination of this cause by the court from in any manner engaging in, permitting, or encouraging the said strike or its continuation, and it is further ordered that the said union, acting through its president and other appropriate officers, agents, servants, and employees forthwith instruct all members of the said union employed in the bituminous coal mines covered by the agreement, to cease and said strike, and immediately to return to their employment, and that said union, acting through the said officers, agents, servants, and employees, cease,

desist, and refrain from ordering, encouraging, recommending, instructing, inducing or in any way permitting the said strike to continue—

and so forth.

May I also, while the Senator has permitted me to take the floor, and it is on our time that I have asked him to let me do so, call to the attention of both the Senator from Florida and the Senator from Oregon, that under the subheading in the decision, the order of the court headed "Pension plan," that there appears this language:

On the morning of April 12, 1948, the following telegram was also dispatched:

To all local unions: Pensions granted. The agreement is now honored.

JOHN L. LEWIS.

That, by the way, follows the earlier paragraph which refers to the appointment, the selection of the Honorable Styles Bridges, who has accepted the appointment referred to in the trustee vacancy, and then follows this, after the statement by the court that the telegram had been dispatched on April 12:

Despite the appointment of a neutral trustee—

who I understand to be Senator Bridges—that is not what the court says, the court says:

Despite the appointment of a neutral trustee—

and may I interpolate again that the reference is obviously to the appointment of Senator Bridges, and then the court continues—

the adoption of the pension plan as aforesaid, and the dispatch of the telegrams as aforesaid, the strike on the part of the union against the said operators and associations, as set forth in paragraph 8 hereof, has continued and is in progress on this date, and the said labor dispute continues unresolved.

I thank you, Senator, for yielding.

Senator MORSE. I am very glad that the Senator from Missouri put into the record this statement, because it illustrates two points for which I have been contending: that the Taft-Hartley law does purport to apply to the workers themselves and, therefore, in my judgment, is exceedingly unacceptable for that reason.

Senator DONNELL. Might I interrupt the Senator? I know he will permit me to interrupt at that point. I want to say there is a clear distinction, as I see it, and the order of the court from being enjoined from striking and continuing a concerted action, and an injunction against an individual, John Jones, from ceasing to work.

Excuse me, Senator, for the interruption.

Senator MORSE. I thank you for the interruption. It lays the foundation for what I fear would be a series of types of injunctions that will flow from that kind of a precedent. We may find that courts will attempt to enjoin the concerted act itself. Second, I think the court's own reference to the appointment of Mr. Bridges, and Mr. Lewis's telegram to them as of April 12 that the pensions have been granted, further shows that those men would not go back to work until they got another order from Mr. Lewis on the 21st asking them to go back to work on the basis that he was taking further actions in regard to the fine. He was filing appeal bonds and was going to take it further. They were perfectly willing to stay out because of the injustice that they thought the fines levied involved, and that the injunction had nothing to do with their going back to work.

Senator DONNELL. Which latest telegram from Mr. Lewis, if the Senator will permit me, was issued on the day, and after the fines aggregating \$1,420,000 were imposed by the courts, and several days after—in fact, 8 days after the dispatch of the telegram with respect to the appointment of Senator Bridges.

Senator MORSE. The time lag illustrates that they went back to work for Mr. Lewis and not for the court. [Laughter.]

Senator DONNELL. I say they did not go back to work until after the court had imposed the fines and after Mr. Lewis, following the imposition of the fines, had sent the telegram.

Senator MORSE. He told them to go back to work. [Laughter.]

Senator PEPPER. Senator, I have my opinion about the matter, but I feel that Mr. Haley is better qualified to answer you since you said you questioned the opinion of both of us. I beg your pardon for stating that, but I think the language speaks for itself. I do not construe it as these gentlemen would.

Mr. HALEY. I do not want to prolong this, but I would like to observe that, as I read the decision, and as I heard the Senate reading from the decision, I am not so sure that the decision itself was referring to employees of the coal operators. I believe the decision was referring to employees of the union.

Senator DONNELL. May I call the attention of the Senator—

Senator PEPPER. In their official capacity.

Senator DONNELL. He refers to agents, employees, and so forth, but I think this is a much broader clause, and in my mind, would certainly include the miners; I think so. It says, "All persons in active concert or participation with them."

Senator PEPPER. Yes.

Mr. HALEY. That is it in general.

I should like to say that after Judge Goldsborough went through the trial he issued his opinion, extemporaneously, but if I may I would like to read two brief paragraphs from it, and this is from Judge Goldsborough in the 1948 strike case in the coal industry:

Now, the court thinks the principle is this: That as long as the union is functioning as a union it must be held responsible for the merest action of its members. It is perfectly obvious not only in objective reasoning but because of experience that men don't act collectively without leadership. The idea of suggesting that from 250,000 to 350,000 men would all get the same idea at once, independently of leadership, and walk out of the mines is, of course, simply ridiculous.

Senator DONNELL. Might I, with the consent both of the Senator and Mr. Haley, make a statement?

Senator PEPPER. I will be glad to let it be on the Senator's time.

Senator DONNELL. This will be on our time. This interpolation, Mr. Haley, in connection with, if I might suggest at this point, state, in view of your raising very properly the question as to whether the reference to the word "employees" is to the coal miners or to the employees of the union, that is also employees, I assume, I call your attention to this further language of the court in its preliminary injunction:

And it is further ordered that the defendants, and each of them and their officers, agents, servants, and employees, and all persons in active concert or participation with them, be and they are hereby enjoined pending final determination of this cause by the court from encouraging, causing, or engaging in a strike or lock-out at any bituminous coal mines covered by the agreement or in any manner interfering with or affecting the orderly continuance of work at the said coal mines, and from taking any action which would interfere with the court's jurisdiction.



Back on your time, Senator Pepper.

MR. HALEY. I will not insist, but if the Senator would care to, I would like to continue the reading of this paragraph:

So that, in general, this court announces a principle of law. The court has no means of knowing whether higher courts will adopt the principle or not, but the court has no doubt about its soundness, not any—that a union that is functioning must be held responsible for the mass action of its members.

You cannot please the union any other way. And the unions are the only thing which labor has to give it comparable bargaining power with capital. It is the only thing which the employee has to give him equal or comparable bargaining power with his employer.

So that the rule of law which I have announced is the only rule which will please the unions, because if the plan is adopted throughout the country of trying to use a wink, a nod, a code, instead of the word "strike," and if that sort of a maneuver is recognized as valid by the courts, then you will have among unions lawlessness, chaos, and ultimate anarchy. And then the unions will have to be socialized. In other words, they will have to be destroyed.

I read those paragraphs just to show that whatever the language might have been in the preliminary injunction, when Judge Goldsborough went into it, after the trial, and considered it thoroughly, as I believe, he assessed the blame and applied the law against the union and its officers.

SENATOR PEPPER. This is my question. Even by Judge Goldsborough's reasoning, in the case I put a while ago, when the contract runs out and there is no obligation on the part of the union to work after the expiration date, it would be difficult for one under that theory to find any offense on the part of the union for not executing a new contract if he did not agree to the contract terms.

MR. HALEY. He would certainly have to review his thinking, I believe, to apply even that doctrine. I agree with you, Senator.

SENATOR PEPPER. Now, Mr. Haley, what did the union demand in this case when the dispute arose? What were the union demands of management that provoked the dispute?

MR. HALEY. There was no demand of the union. The controversy arose between the trustees over their inability to agree on the third mutual trustee.

SENATOR PEPPER. Well, was there some predicate for that? Did the miners contend that the effect of the disagreement would be that they could not get the welfare funds that they claimed that they were entitled to or should have?

MR. HALEY. I do not know that the miners made any representation on it whatever. The only representation they made, they went out on strike. There was machinery within the contract for obtaining a neutral trustee.

SENATOR PEPPER. Did the union and the representatives of management have any discussions about the matter?

MR. HALEY. I do not know. I would suggest that Mr. Moody would probably, since he is actually negotiator, know, but I do not know.

SENATOR PEPPER. Well, the reason I say that is I do not recall the newspaper accounts of the time, but I got the impression that the union was claiming that failure of these two to appoint a third, failure of the trustees to agree upon welfare funds being distributed as they claimed they should be, provoked the dispute, and it was a dispute that brought about the work stoppage, and what I was getting at was, do you know how much the miners demanded as welfare funds that they sought?

Mr. HALEY. No, I do not, and certainly that was not at issue at the time for the reason that the only argument was about the appointment of the neutral trustee.

Senator DONNELL. Senator Pepper, I beg your pardon for interrupting you, but I think it would not be out of line from the standpoint of all of us to put this in the record at this point. This is on my time.

In reading the excerpt from the court a little while ago, you will perhaps recall that I referred to the dispatch of the telegrams, and I read only one, the one from Mr. Lewis of April 12 to all local unions: "Pensions granted. The agreement now honored."

The other telegram was sent April 12, which was 9 days before the date, I believe, of the court's injunction, was it not, Mr. Haley? The court's injunction was on the twenty-first, is that right, or was it on the twentieth? The preliminary injunction was issued on the twenty-first?

Mr. HALEY. That is right.

Senator DONNELL. Yes, sir. Now, the two telegrams to which I referred, to which the court referred, I should say, but using this plural "telegrams," one of them was the one from Mr. Lewis reading:

To all local unions. Pensions granted. The agreement is now honored, which I have already read.

The other one recited on the morning of April 12, 1948, a telegram was dispatched to each district president and to all members of the national executive board, Executive Union, United Mine Workers of America:

This message is for your official information and for immediate transmission to all members of the union. The trustee vacancy in the 1947 welfare fund has now been filled by the selection of the Honorable H. Styles Bridges, who has accepted the appointment. An early resolution of the questions at issue may now be expected. Your voluntary cessation of work should now be terminated and your protest ended. It is the belief of the international union and your officers that the production of coal should be resumed forthwith. It is to your best interests and those of our union and the public welfare that this be done. Therefore, you are now officially advised that you should return to your usual employment immediately upon receipt of this telegram. This message is sent in behalf of the international union as well as in my official capacity as President.

JOHN L. LEWIS,

*President, United Mine Workers of America.*

Now, Mr. Chairman, after the recital of these two telegrams and the recital of the court follows this language of the court on the 21st day of April 1948.

Despite the appointment of a neutral trustee and the adoption of a pension plan as aforesaid and the dispatch of its telegram, as aforesaid, the strike on the part of the union against the said operators and associations, as set forth in paragraph 8 hereof, has continued and is in progress on this date, and the said labor dispute continues unresolved.

I thank you, Senator.

Senator PEPPER. The question was what the basis of the miners' claim was. Now, in the telegram which I believe was April 12—

Senator DONNELL. April 12; yes, sir.

Senator PEPPER. In the April 12 telegram that Mr. Lewis sent out to the miners, he said, "Pensions granted." Now that indicates that they evidently were seeking and expecting pensions. The next was, I believe he said, "Agreement honored."

Senator DONNELL. "The agreement is now honored."

Senator PEPPER. "The agreement is now honored." Evidently he was referring to some sort of agreement which he had considered had been breached.

Mr. HALEY. That is right.

Senator MORSE. Will the Senator permit me to say, that was a clearly implied reference to the oft-repeated slogan of the mine workers: "No contract, no work." "The agreement is now honored."

Senator PEPPER. The agreement being honored, you mean they go back to work?

Senator MORSE. The men had gotten the idea that there was no contract on pensions. There was no agreement. Now he tells them, "We have got a contract, boys. You can go back to work."

Senator PEPPER. I thought it was also possible to infer from that that he had in mind that when one side breaches a contract the other side has the right to adhere to the contract and sue for damages, or take advantage of the breach, so that if the other side does not perform its contract, you have a right to refrain from performing your side. I got the impression he thought they were violating their agreement with the union by not appointing this other trustee and being assured the welfare funds to which he felt they were entitled, and they quit work, but when they did appoint the trustee and when it appeared that they would get the pensions that he felt they were entitled to, he meant in that sense the breach had been repaired, the agreement should go back into effect, and, "therefore, we will go back to work."

Senator DONNELL. Will the Senator permit the introduction of this fact, that the courts define what is meant by the term "agreement" as being "the National Bituminous Coal Wage Agreement of 1947."

Senator MORSE. If the Senator from Florida will permit me to add this, that is the court's definition but the court cannot change the thinking of the men, and the thinking of the men was—

We have no agreement on pensions. We are entitled to pensions. The coal operators are not giving us pensions. No pensions, no work.

Senator PEPPER. That is right, but here is what is important. I am trying to move on to the point here. They made certain welfare demands. Now, eventually the demands they made he thought were in process of being granted by the appointment of the trustee. When the April 12 telegram was sent, had the trustee already agreed to the \$100 a month?

Senator DONNELL. It does not appear, I do not think.

Senator PEPPER. Anyway, they were working toward an agreement. Now, then, eventually what did the trustees find about the welfare fund? What did they provide?

Mr. HALEY. Well, the trustees adopted by a 2 to 1 vote the resolution—

Senator DONNELL. Pardon me, Senator. Before the witness proceeds—and I know the witness will excuse me—I think it is important that I say this. It does appear as follows; this is the court's decree.

On the other hand, April 10, 1948, Hon. H. Styles Bridges was appointed as the third and neutral trustee of the fund by the two trustees representing the union and the operators:

(d) Meetings of the board of trustees as newly constituted have been held on April 11 and 12, 1948, and a pension plan to be carried out under the United



Mine Workers of America welfare and retirement fund section of the agreement was adopted. Ezra Van Horn, operators representative, trustee, dissenting.

Senator PEPPER. That is right. That nails that down very firmly.

Before Mr. Lewis sent out the telegram on April 12, the third trustee had been appointed and two of the trustees had agreed upon a man who evidently was satisfactory to the miners. Then Mr. Lewis sent out a telegram to the workers: "Pensions granted. Agreement honored." Now, then, how many were out on strike on April 11?

Mr. HALEY. I do not have that. Oh, I picked it up here. On April 11 to 13, 230,000.

Senator PEPPER. What is the next date you have?

Mr. HALEY. April 14.

Senator PEPPER. How many?

Mr. HALEY. 170,000.

Senator PEPPER. How much of a gain is that in 1 day?

Mr. HALEY. That is a gain of 60,000.

Senator PEPPER. All right; how about the next day?

Mr. HALEY. 140,000.

Senator PEPPER. That was 20,000 more?

Mr. HALEY. 30,000.

Senator PEPPER. 30,000 more gained.

Mr. HALEY. The next day, 150,000, a loss of 10,000.

Senator PEPPER. And then what is next?

Mr. HALEY. April 19, 90,000.

Senator PEPPER. 90,000?

Mr. HALEY. A gain of 60,000. The next day, April 20, 200,000.

Senator PEPPER. It got down, however, to 90,000 as distinguished from 250,000?

Mr. HALEY. That is right.

Senator PEPPER. It dropped from the day following, I believe you said 250,000 on the 13th?

Mr. HALEY. 230,000.

Senator PEPPER. It dropped from 230,000 on the day following the agreement to 90,000 within a week?

Mr. HALEY. And 2 days later it was up higher than the 230,000.

Senator PEPPER. The Senator from Alabama pointed out when it jumped back up that was contemporaneous with the court's awarding of the preliminary injunction, was it not?

Senator HILL. And the imposition of the fine.

Mr. HALEY. That is correct.

Senator PEPPER. But does that not support the inference that the miners had already, pursuant to Lewis' April 12 telegram, started back to work, and if the rate of acceleration had continued, that they presumably would all have been back to work within a few days without this preliminary injunction and without these fines that were subsequently imposed on the 23d?

Mr. HALEY. That is a possible inference, but I draw a much stronger inference that the telegram of April 20 to the district presidents is the telegram which solved the problem.

Senator PEPPER. All right. Now, then, I want to go back again. If you go on the thesis that it was the settlement of the pension dispute which settled the controversy and sent the miners back to work, then it is a permissible inference that the unwillingness to settle the pension dispute was responsible for the work stoppage, is it not?

Mr. HALEY. Yes.

Senator PEPPER. If you go on that assumption.

Mr. HALEY. Yes; if you make one assumption you will get that conclusion.

Senator PEPPER. That is the point I have been trying to get to. Now we have talked about the provisions of the Taft-Hartley law, that that method, that manner and means of providing coal for the country from the mines of the country—and you in your very frank and candid way have given some comments and observations about that, so that you do not have the sanguine confidence in it that some less-informed persons might have to that approach of keeping the mines of the country running.

Now, Senator Thomas, let us assume that the Thomas bill goes through another door to try to get to the same objective, namely, avoidance of industrial strife and the continuity of the production of coal. Suppose that by taking away from management a weapon that it thought it could have recourse to, for example, the injunction, and suppose by trying to indicate the policy of the Government to encourage industrial peace rather than possibly to precipitate strife, or suppose upon the basis of trying to encourage management to give social justice as much as possible, economic justice to the workers, we could put management in a more agreeable frame of mind to grant such demands as this.

If my hypothesis is good that you might put them in a more agreeable frame of mind to grant such requests as this, that also makes a contribution toward preventing the stoppages of work and the continuity of the production of coal, might it not? That is a rational approach to the same objective which the Taft-Hartley law seeks to achieve through another technique.

Mr. HALEY. That is correct, but the Senator, I am afraid, made some assumption that I could not agree with.

In the first place, I believe the distinguished Senator misspoke when he said availability of injunctions to management. Of course, that is not inherent in the Taft-Hartley law, and I should also like to observe on the other side when our Government—and I am not referring to the Eightieth Congress; I am referring to the executive branch—was faced with this emergency, there are many things that it could have done along the lines that the distinguished Senator has said, but however, if the President of the United States invoked the section and the Attorney General and his assistants referred to the law that it was workable, that it is necessary, essential, and was very laudatory of the provision, and there is quite a difference of opinion as to the reasons, but the result turned out all right—

Senator PEPPER. Let me make two observations, if I may, Mr. Haley. One is, we brought out from Mr. Denham the other day, the general counsel of the NLRB, that under title I of the law—that is title I, is it not, that he spoke about, the 42 injunctions he applied for were all under title I—the general counsel applied for 42 injunctions. Forty of them were applied for against the employees.

Now while management did not have the power that they had before the Norris-LaGuardia Act of instituting injunction suits themselves, nevertheless, under the Taft-Hartley law they do have the right to make a complaint to the general counsel, and if he agrees that the

complaint they present is meritorious, he has the power to start these injunctions, so that indirectly they have the power to set the injunction in motion under title I.

Now then, take the emergency section. These operators are very intelligent men. They read newspapers and they know what is going on and what is being said publicly, and they know that this power of injunction exists at the instance of the President and the Attorney General, and it is not too much to assume that they might themselves infer that if they and Mr. Lewis did not agree, that coal production being essential to the country, probably the Government would step in and get an injunction against these miners and keep them from stopping work so that that coal production would not be interfered with.

That is a reasonable inference, is it not, that they might anticipate that the Government might resort to this instrument that the Taft-Hartley law put in the Government's hands?

MR. HALEY. The converse is also true, Senator. If the economic balance were running in their favor, they might be willing, if not anxious, to sit the strike out, but they were faced with the injunction also.

SENATOR PEPPER. The President is generally, I suppose, expected to use whatever laws are on the statute books and he is one position for not using the laws on the statute books, whereas he would be under an entirely different obligation if only the Thomas law was on the statute books.

MR. HALEY. The only point I was making is that I rather suspect if this law remains as it is, there will be times when employers will be before Congress bitterly complaining about this injunction running against them.

SENATOR PEPPER. But now here is the point I want to come to. Under the Taft-Hartley law the mine operators knew that there was not any authority for the fact-finding board that the President might appoint to make recommendations, so they knew the situation was going to be frozen in status quo for 80 days if the Government did apply for the injunction because there was no provision in the Taft-Hartley law to require the Government, as a condition of applying for that injunction, to say to management, "All right, you have got to give these folks some of this pension that they are seeking"; or if the dispute is a wage dispute, "You have got to give them some increase in wages."

There was no obligation, was there, under the Taft-Hartley law for the Government to require as a condition of giving continuity of work to management from the workers that management had to do anything during that 80 days, was there?

MR. HALEY. I think the injunction required management to meet with the——

SENATOR PEPPER. I know, but they did not have to give them any concessions at all, did they?

MR. HALEY. No, sir.

SENATOR PEPPER. So that management knew that the Government had the authority and under all the circumstances would probably feel compelled to use it to try to keep these men working for another



80 days without giving them any more favorable terms than they had at the beginning of the injunction. But take the Thomas bill.

The management this time that refuses to meet its employees half way faces first an obligation that there shall be no work stoppage defined in the statute. That is one thing.

Second, he reads right in the book, his lawyer tells him, here it is. Remember under this now if this dispute gets to the point where the President has got to step in, he can appoint a fact-finding board, but it is not going to be like that old fact-finding board under the Taft-Hartley law. This fact-finding board can be authorized to make recommendations.

Do you want to face, Mr. Employer, before public opinion in this country and before Congress an affirmative recommendation from this fact-finding board that you shall grant these pensions and you want them to tell the people of this country the conditions that exist in the mines, and how many broken bodies and limbs there are and how much justification there is for this appeal that you are making. You remember now if you precipitate this strike and authorize the appointment of this fact-finding board, you not only have the claim of the miners, but you may also have the affirmative recommendation of a fact-finding board appointed by the President of the United States, which carries great weight with public opinion and Congress that you ought to grant these demands.

Might it not be possible in the face of such a prospect that management might be a little more conciliatory so that management and labor might more readily get together under the Thomas bill by the processes that are contemplated? Is that not a permissible theory?

MR. HALEY. The answer to your question as applied to the coal case is "No," because we do not understand, apparently, the factual situation.

In the 1948 strike there was no controversy between the employers and the employees. The controversy, if that be the proper term for it, was within the board of trustees of the welfare fund.

Senator PEPPER. Will you allow me to interrupt at that point? Who appointed those trustees?

MR. HALEY. The operators appointed one trustee, or the negotiators appointed one. He was named in the contract, and the union appointed one and they set up machinery for the appointment of the third neutral one, but that machinery was not invoked.

Senator PEPPER. I know. Did the trustee of the miners offer or suggest any names?

MR. HALEY. I do not know.

Senator PEPPER. Well, if he did and management told its trustee to agree to that person, would that not end the matter?

MR. HALEY. That is true, and also if the operators suggested a third one.

Senator PEPPER. That is true.

MR. HALEY. And if they could not agree on that, the contract said they should petition the court. They did not do that. The miners went on strike in violation of the contract.

Senator PEPPER. I do not think my factual assumption is inaccurate when the strike resulted from the disagreement of the two, and when management and labor respectively could control the judgment of the two and management could have prevented the work stoppage by telling its man to agree with that other fellow.

MR. HALEY. I do not think that is a factual situation.

Senator PEPPER. Could it not? Management could have influenced its trustee, could it not?

Mr. HALEY. I do not know that to be the case.

Senator PEPPER. You do not think they could have influenced the trustee that they appointed?

Mr. HALEY. I am not so sure that they could or did. He is a separate entity of the trust fund. They certainly cannot influence him.

Senator PEPPER. Let us assume the dispute was between the miners and management over the welfare fund, because at one time I recall Mr. Lewis saying in the press that management would not bargain with him over the question of welfare funds because they said that was not the proper subject of collective bargaining.

Suppose that was true. Would then this hypothesis that I gave awhile ago be a permissible one?

Mr. HALEY. That is right, a permissible one.

Senator PEPPER. So anybody who thinks the Thomas bill has not got a good deal more thinking behind it than might appear on the surface probably has not considered all that is involved in this complicated controversy.

Mr. HALEY. I have considered it, read it carefully, and I am sure we are seeking the same end, the promotion of industrial peace. I do not think, however, based on my knowledge and experience, that the Thomas bill would be as effective in an appropriate field as the present statute. I am inclined to agree with the Senator that the present law is perhaps not all it should be.

Senator PEPPER. I respect your opinion. May I ask you just one other question.

Your exhibit A, speaking of major bituminous coal strikes 1935 through 1948, shows that in 1948 the man-days item in the last column 8,610,000, that is in 1948, while the Taft-Hartley law was in effect, is it not?

Mr. HALEY. That is correct.

Senator PEPPER. Now what other year between 1935 and 1948 were there that many men idle on account of strikes?

Mr. HALEY. In 1946.

Senator PEPPER. At which time there were 14,620,000.

Mr. HALEY. That is correct. Do you desire the figures on workers or man-days?

Senator PEPPER. Man-days.

Mr. HALEY. Man-days idle.

Senator PEPPER. The next number, the next highest number of man-days lost in any previous year I believe is 7,048,000 in 1943.

Mr. HALEY. That is correct.

Senator PEPPER. And the next is 6,920,000 in 1939.

Mr. HALEY. That is correct.

Senator PEPPER. And what is the next, 5,348,000 in 1941?

Mr. HALEY. That is correct.

Senator PEPPER. So that there were more man-days out in the bituminous coal mines of the country on account of strikes in 1948 than in any other year between 1935 and 1948 except the year 1942.

Mr. HALEY. That is correct.

Senator PEPPER. That is all.

Mr. HALEY. I might add—

Senator PEPPER. Of course, the Taft-Hartley law was only in effect in 1947 and 1948.

Mr. HALEY. That is right.

Senator PEPPER. So that in 1946 the Taft-Hartley law was not in effect.

Mr. HALEY. That is correct. That record does not impress this witness as one which indicates the Taft-Hartley Act impinges unduly on the right to strike.

Senator PEPPER. As I said a while ago, you must again meet one or the other horn of the dilemma. Some people said, Senator Taft said, as I read here the other day, in his preface to Mr. Hartley's book, that the public demanded legislation to stop strikes, and when Mr. Tobin appeared here and said that the Taft-Hartley law had not stopped strikes, that relative to comparable periods after World War I there were more strikes after World War II than after World War I, and then Mr. Feinsinger testified here the other day that there were more man-days lost during the Taft-Hartley period than in the prewar Wagner period, and then when your figures show here that there were more days lost on account of strikes under the Taft-Hartley law than in any other year since 1946—except for the year 1946—whatever other virtues, may be claimed for it, it has not stopped strikes. You can attest to that.

Mr. HALEY. I can attest to that and I can say it certainly follows the man-days idle in 1948 would have been much greater if it had not been for the operation of the Labor-Management Relations Act, and that is true no matter what theory you assume; whether the act, a strike, forced the telegram, forced the agreement on the welfare funds, or whatever the reason, certainly this figure would have been much greater if it had not been for the act.

Senator DONNELL. Senator PEPPER, might I ask one question?

Senator PEPPER. I have concluded.

Senator DONNELL. On our time. May I ask you this, Mr. Haley, on this question of strike, whether or not it was affected by an injunction or a contempt order of the court. I would like to go back for a moment to the 1948 strike. We have been talking about the 1948 strike. These chronological figures and dates and so forth you have given us are with reference to the 1948 strike.

Mr. HALEY. That is correct.

Senator DONNELL. Now I observe in 330 United States at pages 267 and following, these facts. The court recites that a gradual walk-out by the miners commenced on November 18—that would be November 18, 1946.

Then on the 18th the court issued a temporary order which is set out in the page here, two pages, issued a temporary order restraining the defendants from continuing in effect a certain notice of November 15, so we have the situation here where a gradual walk-out by the miners commenced on November 18.

A temporary order is issued by the court restraining the defendants from continuing in effect a certain notice and encouraging the mine workers from interfering in the operation of the mines, et cetera.

Then we have the court saying by midnight, November 20, consistent with the miners' no-contract no-work policy, a full-blown strike was in



progress and the court said, "Mines furnishing the major part of the Nation's bituminous coal production were idle."

Then we have on November 21 the United States filed a petition for a rule to show cause why the defendants should not be punished as and for contempt alleging a willful violation of this restraining order of November 18, 1946.

Then we have hearings, et cetera, and then the Court, the Supreme Court, says on page 269:

The court—  
that is the lower court—

entered judgment on December 4 fining the defendant Lewis \$10,000 and the defendant union \$3,500,000. On the same day a preliminary injunction effective until a final determination of the case was issued in terms similar to those of the restraint order.

Now please fix your mind for a moment on that date of December 4, 1946, which was that, so the court says, on which the court entered a judgment fining Mr. Lewis \$10,000 and the defendant union \$3,500,000.

Would you tell us, bearing in mind that date, December 4, whether the miners returned to work on or after or before December 4, 1946, the date on which the fines were imposed?

MR. HALEY. I well recall that they returned to work after the fines were imposed.

SENATOR DONNELL. How long after?

MR. HALEY. I do not recall. It was a matter of several days that they drifted back to work, as I recall.

SENATOR DONNELL. But it was after December 4, 1946, and not on or before December 4, 1946?

MR. HALEY. I believe that is correct.

SENATOR DONNELL. Would you be kind enough to furnish for our records—and I ask that it be incorporated at this point in the proceedings, Mr. Chairman—the information with respect to the return dates of the workers when they returned to work as compared with December 4, 1946, the latter date being that on which Lewis was fined \$10,000 and the defendant union fined \$3,500,000.

MR. HALEY. If the chairman desires, I shall do it.

THE CHAIRMAN. It will be inserted without objection.

(Pursuant to the foregoing colloquy, Mr. Haley submitted a paper as follows:)

JOINT SUPPLEMENTAL STATEMENT OF THE NATIONAL COAL ASSOCIATION, SOUTHERN COAL PRODUCERS ASSOCIATION, ON "COAL PRODUCTION FIGURES AND MEN IDLE DURING THE 1948 COAL STRIKE"

(James W. Haley, general counsel, National Coal Association; Joseph E. Moody, president, Southern Coal Producers Association)

On February 22 and 23, 1949, James W. Haley, secretary and general counsel of the National Coal Association, and Joseph E. Moody, president, Southern Coal Producers Association, Southern Building, Washington 5, D. C., testified before the Senate Committee on Labor and Public Welfare and outlined the views of bituminous coal mine operators with respect to the proposed enactment of new national labor legislation. During the course of the proceedings, Messrs. Haley and Moody were asked to furnish the committee with figures showing the amount of coal loaded and the number of men idle during the 1948 coal strike. The request of Senator Donnell appears on pages 5080 and 5081 of the transcript of

testimony dated February 23, 1949. The requested information which is jointly submitted for the consideration of the committee is as follows:

Production reports of the United States Bureau of Mines are available only with respect to weekly production, and no figures are available with respect to daily production. Those reports reveal the following information:

During the first 10 weeks of 1948, weekly production of bituminous coal averaged 12½ million tons. These figures, of course, include coal produced by nonunion miners and members of the Progressive Mine Workers of America. The production per week for the period immediately before, during and after the strike was as follows, expressed in percentages of the 10 week average set forth above:

Week ending—	Percent	Week ending—	Percent
Mar. 13, 1948.....	106.5	Apr. 10, 1948.....	19.5
Mar. 20, 1948.....	34.9	Apr. 17, 1948.....	61.8
Mar. 27, 1948.....	16.9	Apr. 24, 1948.....	92.5
Apr. 3, 1948.....	16.7	May 1, 1948.....	111.0

*Net tons of bituminous coal lost due to strike, Mar. 15 to Apr. 23, 1948*

	Daily average	Lost per day	Lost per week
Week ended—			
Mar. 13, 1948.....	2,219,000		
Mar. 20, 1948.....	727,000	1,492,000	8,952,000
Mar. 27, 1948.....	353,000	1,866,000	11,196,000
Apr. 3, 1948.....	348,000	1,871,000	11,226,000
Apr. 10, 1948.....	406,000	1,813,000	10,878,000
Apr. 17, 1948.....	1,288,000	931,000	5,586,000
Apr. 24, 1948.....	1,923,000	293,000	1,758,000
May 1, 1948.....	2,312,000		
Total tons lost.....			49,596,000

The records indicate that from 15 to 17 percent of the national production is mined by nonunion and Progressive mines. The United Mine Workers of America have about 350,000 members working in the bituminous coal mines, and it is obvious that all of these were idle during the major portion of the strike.

The only available figures concerning number of men on strike each day are those which were compiled by the National Coal Association at the time of the strike from newspaper reports and from information received from local operators' associations. Those figures, which were given to the committee by Mr. Haley, are repeated here:

"March 15, 220,000 men idle. March 16 to and including April 12, total shut-down by UMWA members. April 13, 230,000 men idle. April 14, 170,000 men idle. April 15, 140,000 men idle. April 16, 150,000 men idle. April 19, 90,000 men idle. April 20, 200,000 men idle. April 21, 250,000 men idle. April 22, 50,000 men idle. April 23, 50,000 men idle."

#### SUPPLEMENTAL STATEMENT NO. 1 OF THE NATIONAL COAL ASSOCIATION, "CHRONOLOGY OF THE 1946 COAL STRIKE"

(James W. Haley, general counsel, National Coal Association)

On February 22, 1949, James W. Haley, secretary and general counsel of the National Coal Association, Southern Building, Washington 5, D. C., testified before the Senate Committee on Labor and Public Welfare and outlined the views of bituminous coal-mine operators and owners with respect to the proposed enactment of new national labor legislation. During the course of the proceedings, Senator Forrest Donnell of Missouri requested additional information for the record which would show how soon the miners returned to work after the imposition of fines against John L. Lewis and the UMW on December 4, 1946. The pertinent excerpts from the transcript of testimony, beginning at page 4789, read as follows:

"Senator DONNELL. \* \* \* Now please fix in your mind for a moment on that date of December 4, 1946, which was that, so the court says, on which the court entered a judgment fining Mr. Lewis \$10,000 and the defendant union

\$3,500,000. Would you tell us, bearing in mind that date, December 4, whether the mine(r)s returned to work on or after or before December 4, 1946, the date on which fines were imposed?"

Pursuant to the request of Senator Donnell, the National Coal Association submits for incorporation in the record, the following chronology covering the coal strike of 1946.

*May 21, 1946.*—Executive Order 9728 issued by President Truman taking possession of bituminous coal mines pursuant to the authority of the War Labor Disputes Act (Smith-Connally Act).

*May 29, 1946.*—Wage agreement concluded by and between Secretary of Interior Krug, as Coal Mines Administrator, and John L. Lewis, United Mine Workers of America.

*October 21, 1946.*—John L. Lewis transmitted letter to Secretary Krug, Coal Mines Administrator, purporting to give notice of reopening of the contract and requesting commencement of negotiations beginning November 1. The Lewis letter charged breach of contract on part of the Government.

*November 1, 1946.*—Conferences began in Washington although the Government denied that the UMW had any right to reopen the agreement for negotiations at that time.

*November 15, 1946.*—John L. Lewis notified Secretary Krug that the union was "exercising its option" by terminating the so-called Krug-Lewis agreement as of 12 o'clock, midnight, Wednesday, November 20, 1946. Secretary Krug replied that the UMW had no power to terminate the agreement. President Truman announced his strong support of Secretary Krug's position.

John L. Lewis circulated copies of his November 15 letter to Secretary Krug among the mine workers for their "official information."

*November 16, 1946.*—Eighteen thousand UMW members on strike.

*November 18, 1946.*—Thirty-six thousand UMW members on strike.

The United States asked the Federal courts for a declaratory judgment to the effect that the union had no power unilaterally to terminate the Krug-Lewis agreement, and for injunctive relief.

The United States District Court for the District of Columbia issued a temporary restraining order against the UMW and set the case down for hearing on November 27.

*November 19, 1946.*—Sixty thousand UMW members on strike in defiance of the court's order.

*November 20, 1946.*—One hundred thousand UMW members on strike in defiance of the court's order.

*November 21, 1946.*—Total shut-down of all union mines due to full-blown strike in defiance of the court's order.

The United States filed a petition for a rule to show cause why the UMW and John L. Lewis should not be punished for contempt. The rule issued setting November 25 as the return day and November 27 as the day for the trial on the contempt charge.

*November 25, 1946.*—Total strike continued in defiance of the court's order, causing continued total shut-down of all union mines.

Counsel for UMW informed the court that no action had been taken to end the strike.

*November 27, 1946.*—Total strike continued in defiance of the court's order causing continued total shut-down of all union mines.

The court extended the temporary restraining order and heard oral argument on the union's motion to dismiss.

*November 29, 1946.*—Total strike continued in defiance of the court's order causing continued total shut-down of all union mines.

The United States District Court for the District of Columbia overruled the union's motion to dismiss the temporary restraining order.

*November 29 to December 3, 1946.*—Total strike continued in defiance of the court's order causing continued total shut-down of all union mines.

Trial of John L. Lewis and the United Mine Workers of America on contempt charges proceeded.

*December 3, 1946.*—Total strike continued in defiance of the court's order causing continued total shut-down of all union mines.

The court found John L. Lewis and the UMW guilty of criminal and civil contempt.

*December 4, 1946 (Wednesday).*—Total strike continued in defiance of the court's order causing continued total shut-down of all union mines.



The court fined John L. Lewis \$10,000 and the UMW \$3,500,000. Preliminary injunction issued effective until a final determination of the case.

*December 5, 1946 (Thursday).*—Total strike continued in defiance of the court's order causing continued total shut-down of all union mines.

John L. Lewis and the UMW filed notices of appeal from the finding of guilt on the contempt charges.

*December 6, 1946 (Friday).*—Total strike continued in defiance of the court's order causing continued total shut-down of all union mines.

The Government filed a petition for certiorari with the Supreme Court of the United States.

*December 7, 1946 (Saturday).*—Total strike continued but on this date John L. Lewis addressed a letter to all members of the UMW which stated in part "each member is directed to return to work immediately."

*December 8, 1946 (Sunday).*—Not a work day in the bituminous coal-mining industry.

*December 9, 1946 (Monday).*—The miners returned to work and all mines resumed production on this date. The Supreme Court granted the petition for certiorari.

#### CONCLUSION

It is clear from an examination of the foregoing facts that the mine workers went back to work solely because they were "directed" to do so by their president, John L. Lewis. By the same token, Mr. Lewis had no other inducement to order his men back to work than the \$10,000 fine against him personally and the \$3,500,000 fine against his union plus the probability of further substantial penalties for noncompliance with the court's order. This is emphasized by the fact that no concessions whatsoever were made as a result of the strike and work was resumed under exactly the same terms and conditions that were in effect at the time the strike was called. As a matter of fact, the Krug-Lewis agreement governed the operations of the mines until the Coal Mines Administrator returned the mines to the owners in the summer of 1947. It is the inescapable conclusion that the only inducement which prompted John L. Lewis to end the strike of 1946 was the existence of the injunction and the vigorous enforcement of the court's authority. The most satisfactory explanation for the delay on the part of Lewis in ordering the workers back on the job—from December 4 to December 7—is that the court's decision came out on Wednesday and the UMW believed it impractical to attempt to get the men back into the mines at that time due to the intervention of the week-end holiday period.

The CHAIRMAN. Senator Douglas.

Senator DOUGLAS. This has been a most interesting period here in which we have been probing the motives and influences at work. I gather that Senator Donnell and you believe that it was the fine on the 20th of April which fundamentally caused Mr. Lewis to send his telegram of April 21 and for the miners to go back to work on April 22.

Senator DONNELL. The telegram was April 20, Senator.

Senator DOUGLAS. Pardon me.

Senator DONNELL. You are speaking about 1948.

Senator DOUGLAS. Yes.

Senator DONNELL. April 20.

Senator DOUGLAS. The telegram was the 20th. He recommended that they go back the following day. The contentions, I understand, of Senator Morse and Senator Pepper, are that it was the agreement upon pension terms which caused the men to go back.

Now the puzzling thing in connection with the contention of Senator Pepper and Senator Morse is that in the chronology which you have given, Senator Bridges made his ruling on April 12, and that fact, taken alone, raises, of course, the question in all our minds, why did it take 8 or 9 days for this decision. The decision is what sent them back; why did it take 8 or 9 days after the decision was given for the men to return, whereas they did return in a day or two

after the fines were imposed, but I wondered if there are any facts which have been unintentionally left out.

My own memory is incomplete because I was otherwise engaged at that time. We were having a primary in Illinois, but if my memory serves me right, the decision of Senator Bridges was not agreed to by the operators' representative on the board of trustees, Mr. Van Horn. Is that not true?

Mr. HALEY. That is correct.

Senator DOUGLAS. And did he not obtain an injunction restraining the decision of Senator Bridges, and the miners' representative from going into effect?

Mr. HALEY. I do not think he obtained an injunction.

Senator DOUGLAS. Did he seek an injunction?

Mr. HALEY. He sought an injunction.

Senator DOUGLAS. And when did Mr. Van Horn withdraw his objection?

Mr. HALEY. Well, I do not recall, but it was some months later. There were three or four suits involved in that issue that went along into the summer and into last fall.

Senator DOUGLAS. I do not know that history can ever show it, but I have wondered if an agreement had been reached sometime between the 12th and the 20th or the evening of the 20th on the pension terms, certainly——

Mr. HALEY. Yes, the agreement had been reached.

Senator DOUGLAS. It had been reached on the 12th.

Mr. HALEY. Yes.

Senator DOUGLAS. Had it?

Mr. HALEY. Yes.

Senator DOUGLAS. The decision had been given by Senator Bridges, but it had not been agreed to by Ezra Van Horn.

Mr. HALEY. That is correct.

Senator DOUGLAS. And could not the miners believe that when Mr. Van Horn was refusing to agree, the operators had refused to agree?

Mr. HALEY. Well, we do not understand the facts of the situation. The operators were not involved in this controversy at all.

Senator DONNELL. Senator Douglas——

Senator DOUGLAS. I understand that legal point, but the men out in the field regarded Van Horn as being in such close touch with the operators that if Van Horn took this position the miners inferred it was the position of the operators, and this very subtle distinction which you make seems to me as a lawyer's distinction, but which plain coal miners out in the field would not take in too great stock.

The fact that Van Horn was protesting the decision of Bridges would give to the miners the belief that the operators were refusing to go along.

Mr. HALEY. Well, maybe I do not know too much about the miners and their attitude, but I certainly know that if they had on the one hand some report somewhere that maybe Van Horn, one of the trustees, would not agree, had voted in the minority against the other two trustees, and on the other hand they had a telegram from Mr. John L. Lewis saying "The contract is honored. Return to work," and so forth, I am inclined to think they would believe Mr. Lewis.

Senator DOUGLAS. Well, I have often wondered if there was not some sort of a secret code at work in this whole business, but I am not

going to make any comments on that, but what I am curious about is whether there was, in fact, a settlement of the pension question by the operators between the 12th and 20th, the fact that Mr. Van Horn sought to enjoin the decision of Mr. Bridges would have given to any person, the average reasonable man in the field the idea that no agreement had been concluded, and he might well have inferred that he was waiting until such an agreement had been effected.

Mr. HALEY. Well, no, I think the time schedule would indicate that those injunctive proceedings were not begun until way after the miners had returned to work. I think that can be sustained very, very readily. I may have that schedule right here. I am sure that is what it will show.

No, I do not believe I have that schedule, but I am confident that these proceedings against the trustees were instituted by Mr. Van Horn at a date much sooner than the date of the return of the miners.

Senator DOUGLAS. After April 22?

Mr. HALEY. Yes, sir. There was no strike, no reaction in the industry when Van Horn filed the several lawsuits. They did not go out on strike.

Senator PEPPER. Will the Senator yield?

Senator DOUGLAS. I yield.

Senator PEPPER. How do you account, Mr. Haley, for 140,00 of these 230,000 who were out on the 13th being back to work within a few days, less than a week after the agreement?

Mr. HALEY. Well, the injunction had been issued and Mr. Lewis was being tried in court, and he had sent several telegrams. It is hard to follow it through. It is a general and a difficult problem.

Senator DOUGLAS. Mr. Haley, it is more significant, I think, that the number went down to about 90,000, did it not, on the 14th or 15th?

Mr. HALEY. That is correct.

Senator DOUGLAS. Then it rose again to 150,000. 150,000 more went out on strike in the next week. After the Bridges telegram and the initial Bridges award and the initial Lewis telegram, to all intents and purposes the strike seemed to be over, but 2 or 3 days later a hitch developed, and instead of the number continuing to decrease, the number went up by 150,000.

Now why did it go up? There are two possibilities: (a) that the men thought that the agreement had not been concluded; (b) that they believed that there would be a heavy sentence imposed upon Mr. Lewis and this might depend upon the UMW, unless you can suggest a third alternative.

If either one of those things were true, that is precisely what Senator Morse and Senator Pepper have been contending, namely, that the fear of punishment under an injunction does not cause men to work, but rather causes them to strike, and secondly, that strikes are settled when you agree on the substantive issues.

Mr. HALEY. Well, I would say that there is a third alternative. I think perhaps we attach too much significance to these fluctuating figures. You must realize that the coal-producing areas are spread over some 28 States, and they are in rural areas and so forth, and there really perhaps is not any direct connection because what one does another will do; one going out, another going in.

Senator DOUGLAS. They went back with such rapidity after Mr. Lewis' telegram of April 20, with extraordinary speed—190,000 went



back in 2 days there, but 150,000 went out after apparently an agreement had been reached. Now there is the mystery.

Mr. HALEY. The effectiveness of this injunction, Senator, runs as Judge Goldsborough pointed out, to the union and its leadership. That is, the men refused to return to work, but the injunction does not run against them.

But Mr. Lewis was well aware of the implication of the contempt holding, and he was well aware of what the consequences probably would be to him personally, and to the union, and that, of course, induced him to send the telegram or do whatever he was required to do to get the men back to work.

Senator DOUGLAS. Why did the telegram of April 12 work? That was apparently an order to return to work. This was subsequent to a decision handed down in favor of the men by Senator Bridges. It started to get the men to go back to work, but then something happened. What happened?

Mr. HALEY. Well, I would not assume to know just what true meaning is attached to the telegram which Mr. Lewis sent to the local unions and to the district presidents. As the Senator suggested, I do rather suspect there is some kind of a code.

Senator DOUGLAS. I have pondered over that question at times.

Mr. HALEY. I have pondered over it myself, but I have not reached any answer.

Senator DONNELL. Mr. Chairman, with the Senator's indulgence, may I place this citation in the record. The Van Horn case we have been endeavoring to find when it was filed, is as follows. It was decided, as I understand it here, though I am not quite clear as to that for the reason I will indicate in a moment—perhaps I will read what it says here. It is entitled on page 22, L. R. R. M. 2232, as follows:

*Van Horn v. Lewis*, United States District Court, District of Columbia; *Van Horn, etc., v. Lewis et al.*, No. 1651-48, June 22 and 23, 1948.

Senator DOUGLAS. By the courts.

Senator DONNELL. I might say to the Senator I am not stating that is the date of the filing of it. We have been endeavoring to find when it was. I think I am correct, am I not, Mr. Shroyer; am I free to quote this gentleman?

Mr. Gall, would you just rise a minute. You had something to do with this Van Horn litigation, did you not?

Mr. GALL. Yes. I cannot tell you the exact date.

Senator DONNELL. Do you know whether it was after —

Mr. GALL. It was after the 12th of April.

Senator DONNELL. Was it after the 20th of April, do you know, that it was filed?

Mr. GALL. My recollection is it was, but I would have to confirm it.

Senator DONNELL. These dates are June 22 and 23, 1948. It is rather unusual that there would be two dates there, and then only an oral opinion thereafter. It would sound like the opinion was partially on one date and then the other.

Mr. GALL. That is correct.

Senator DOUGLAS. I hate to call the stop-watch on my friend. I have been asking probably too many questions.

Senator DONNELL. May I ask Mr. Haley, if his good nature will permit him or direct him rather, to get us the date, if he could, on

which that Van Horn v. Lewis case took place, the citation which I have given which was filed.

Mr. HALEY. I will be very happy to give you the dates when each of the Van Hohn suits were filed.

(Subsequently, Mr. Haley submitted the following:)

SUPPLEMENTARY STATEMENT NO. 2 OF THE NATIONAL COAL ASSOCIATION,  
"CHRONOLOGY OF VAN HORN LITIGATION"

(James W. Haley, general counsel, National Coal Association.)

On February 22, 1949, James W. Haley, secretary and general counsel of the National Coal Association, Southern Building, Washington 5, D. C., testified before the Senate Committee on Labor and Public Welfare and outlined the views of bituminous coal mine operators and owners with respect to the proposed enactment of new national labor legislation. During the course of the proceedings, Senator Forrest Donnell of Missouri requested additional information which would show the chronology of the litigation instituted in the Federal courts by Ezra Van Horn as one of the trustees of the UMW welfare fund. The requested information has been set forth hereinbelow.

*March 20, 1948.*—Ezra Van Horn petitioned the United States district court for the appointment of a third trustee to replace Thomas E. Murray, neutral trustee who had resigned because of his inability to compose the differences between the other two trustees representing the operators and the union with respect to the appropriate means of activating the welfare fund (Civil Action No. 1154-48).

\* \* \* \* \*

Approximately 220,000 men were on strike at this time.

*April 6, 1948.*—Ezra Van Horn petitioned the United States district court for a declaratory judgment to the effect that the provisions of the Labor Management Relations Act (Taft-Hartley law) required that the welfare fund be used for the benefit of "only those persons who are now or have been since July 7, 1947, employees of the employers who are parties to said agreement (union contract) and the families and dependents of such persons."

Approximately 220,000 men were on strike at this time.

*April 10, 1948.*—John L. Lewis, trustee, UMW, and Ezra Van Horn, trustee for the bituminous owners and operators, agreed upon the selection of United States Senator Styles Bridges, Republican of New Hampshire, as the third neutral trustee in order to activate the welfare fund.

\* \* \* \* \*

Approximately 230,000 men were on strike at this time.

*April 12, 1948.*—John L. Lewis, union trustee, and United States Senator Styles Bridges, impartial trustee, agreed upon the terms and conditions of the initial activation of the welfare fund. Ezra Van Horn, operator trustee, did not concur in the proposed plan for putting the welfare fund into operation.

\* \* \* \* \*

Approximately 230,000 men were on strike at this time.

(NOTE.—On this date, John L. Lewis dispatched two telegrams: One to the UMW locals informing them that the pensions had been granted and the "agreement honored"; the other to each district president and to all members of the national executive board urging that the "production of coal should be resumed forthwith.")

*April 13, 1948.*—In the light of the agreement upon the selection of Senator Bridges as the third neutral trustee of the welfare fund, Ezra Van Horn requested the dismissal of the petition for the appointment of a third trustee which was filed in the United States district court on March 20, 1948. The request for dismissal was granted by the court.

Approximately 230,000 men were on strike at this time.

\* \* \* \* \*

*April 14-15, 1948.*—The contempt trial of John L. Lewis and the UAW took place before Justice Goldsborough.

\* \* \* \* \*

Approximately 170,000 men were on strike on April 14 and 140,000 on strike on April 15, 1948.

*April 19, 1948 (Monday).*—On this date, Justice Goldsborough issued the decision of the United States district court finding John L. Lewis and the UMW guilty both civil and criminal contempt.

\* \* \* \* \*

Approximately 90,000 men were on strike at this time.

*April 20, 1948 (Tuesday).*—Justice Goldsborough imposed fines of \$20,000 on John L. Lewis and \$1,400,000 on the UAW.

John L. Lewis dispatched the telegram which stated, "We are today executing bonds perfecting appeal. I do hope you will convey to each member my wish that they immediately return to work."

\* \* \* \* \*

Approximately 200,000 men were on strike at this time.

*April 21, 1948 (Wednesday).*—Ezra Van Horn filed Civil Action 1651-48 in the United States district court against John L. Lewis and Senator Styles Bridges, as trustees, asking the court to enjoin the defendants from disbursing welfare funds without the unanimous consent of the three trustees and that the defendants be enjoined from paying benefits to union members without regard to whether or not they were ever employed by signatories to the 1947 wage agreement. The petition charged that the resolution of the majority of the trustees was not actuarially sound and did not comply with the provisions governing such plans as set forth in the Labor Management Relations Act in that contemplated payments would be made to other than "employees of such employer."

\* \* \* \* \*

Approximately 250,000 men were on strike at this time.

*April 22, 1948 (Thursday).*—Approximately 50,000 men remained out on strike at this time. There were no significant developments in connection with any of the civil suits instituted by Ezra Van Horn.

*April 23, 1948 (Friday).*—Something less than 50,000 men remained out on strike at this time. There were no significant developments in connection with any of the civil suits instituted by Ezra Van Horn.

*April 26, 1948 (Monday).*—All men had returned to work and normal operations were resumed at the mines.

*June 16, 1948.*—Ezra Van Horn filed a petition similar to the civil action filed on April 21, 1948 (C. A. 1651-48) except that objection was made to the action of June 11, 1948, whereby John L. Lewis and Senator Bridges voted to begin payments and Lewis was named administrative representative of the fund and Josephine Roche as director. Van Horn objected on the ground that he was thus deprived of any voice in the management of the fund.

*June 22, 1948.*—Justice Goldsborough issued his decision in Civil Action 1651-48 (filed April 21, 1948, by Van Horn) holding that a majority vote of the trustees was sufficient to authorize the payment of benefits under a charitable trust and that the proposed plan of activation was reasonable and proper. (The court bypassed the question of whether or not it was proper to disburse funds to other than sometime employees of signatories to the union contract.)

Immediately after this decision Ezra Van Horn requested the dismissal of the suit filed in the United States district court on June 16, 1948. The court granted the dismissal.

#### CONCLUSION

It can be seen from an examination of the above facts that the four civil actions commenced in the United States District Court for the District of Columbia by Ezra Van Horn, trustee, in no way affected the strike action of the UMW during the course of the 1948 strike. Obviously the mine workers returned to work only after receipt of the telegram from their leader, John L. Lewis, under date of April 20, 1948, requesting an immediate return to work. Effective action with respect to the Van Horn suits was not taken by the court until dates considerably subsequent to the return to work by the mine workers beginning on April 21, 1948. There is no basis in fact for an assumption that the miners' return to work was contingent upon anything other than the appropriate word from their leader. It is equally certain that their leader, John L. Lewis, gave the appropriate word to the members of the UMW out of a wholesome but belated respect for the power of the injunction which was outstanding against him and his union.

Senator DOUGLAS. I will just make one final comment, and I hope my good friends who are lawyers will not regard me as too irreverent: Sometimes there is a good deal of shadow-boxing in suits which are filed and agreements which are reached, and so forth, and I do not suppose that we could ever find out, but I would be very, very



curious to know whether an agreement was reached between the operators and the United Mine Workers somewhere between the 12th and the 20th on the terms of the pension plan.

Now, this may be like a Sherlock Holmes mystery without having the benefit of Sherlock to help us, but I say it is an interesting subject for research by people who are interested in human motives.

Senator PEPPER. Mr. Chairman, I want to ask one question more, please.

Mr. Haley, can you tell us what percentage of the bituminous coal miners of the country still live in homes which do not have running water?

Mr. HALEY. No, sir; I cannot.

Senator PEPPER. Well, I asked that question because I had heard the figures. I think something like half, or approaching half, of the homes the miners live in still do not have running water, and when we had this legislation up in the Senate. I believe it was Mrs. Agnes Meyer who had made an inquiry into the coal mines, the coal mine areas. I think the Washington Post, one of the Washington papers, either the Post or the Times-Herald, had a lot of pictures showing the kind of houses that the coal miners lived in, and the sanitary conditions around those houses did not indicate that the miners, even now with all the strong union that they are supposed to have and with the able, militant, dynamic leadership of John L. Lewis, have reached the levels of luxury.

Mr. HALEY. I say that the percentage of running water is ever increasing, and the percentage of homes owned by the miners is ever increasing, and I should like to point out, too, that the miners receive substantial wages, now making, according to the Bureau of Labor Statistics, in excess of \$1.95 per hour.

I think that was in December, the highest wage in the history of the world, I believe.

Senator PEPPER. Could you give us a year's earnings? Tell us what the average miner makes in a year?

Mr. HALEY. I can supply the figure. I do not recall it at the present time, but there were a number of miners, of course, in 1948, who made in excess of \$5,000 and \$6,000 per year. I do not know what the average earnings were, but it was well up in the top of all earnings.

Senator PEPPER. Would you have any objection to supplying for the record about what the average earnings are per year and what the number of houses are which have running water?

Mr. HALEY. I should be very happy to do so. I welcome the opportunity.

(Subsequently, Mr. Haley submitted the following:)

SUPPLEMENTAL STATEMENT NO. 3 OF THE NATIONAL COAL ASSOCIATION, "AVERAGE ANNUAL EARNINGS," "HOUSING CONDITIONS"

(James W. Haley, general counsel, National Coal Association)

On February 22, 1949, James W. Haley, secretary and general counsel of the National Coal Association, Southern Building, Washington 5, D. C., testified before the Senate Committee on Labor and Public Welfare and outlined the views of bituminous coal mine operators and owners with respect to the proposed enactment of new national labor legislation. During the course of the proceedings, Senator Claude Pepper, of Florida, requested additional information for the record concerning average annual earnings of miners and housing conditions.

Page 5001 of the transcript of testimony, beginning with the next to last line, reads as follows:

"Senator PEPPER. Would you have any objection to supplying for the record about what the average earnings [of the miners] are per year and what the number of [their] houses are which have running water?"

"Mr. HALEY. I should be very happy to do so. I welcome the opportunity."

Pursuant to the request of Senator Pepper, the National Coal Association submits hereinbelow the information in question.

#### ESTIMATED AVERAGE EARNINGS OF MINERS EMPLOYED IN ORGANIZED BITUMINOUS COAL MINES

According to latest available figures of the Bureau of Labor Statistics, United States Department of Labor, estimated average annual earnings of bituminous coal miners for 1948 amounted to \$3,734. This computation is based on average weekly earnings for January through November. According to the figures published by the Bureau of Labor Statistics, average weekly earnings for the first 11 months of 1948 were \$71.80. Figures for December have not yet been published, but it is certain that the December average weekly earnings in the bituminous coal mining industry were no lower than the average for the 11 preceding months.

The average miner, of course, enjoys many other benefits which are not reflected in an abstract computation showing an average annual earnings figure. There is, for example, the miner's potential interest in the health and welfare fund to which bituminous owners and operators are making a combined total contribution of more than \$250,000 per day. Moreover, under the present contract the mine workers receive a vacation payment of \$100.

#### THE NUMBER OF BITUMINOUS-COAL MINERS' HOUSES WHICH HAVE RUNNING WATER

More than 65 percent of all bituminous-coal miners own their own homes or rent from private parties; the remainder occupy company houses. Company housing of coal miners was born of necessity, not of choice. Many mines are located in sparsely settled regions and attractive living accommodations must be provided by companies in order to induce workers to live in such areas.

No mining company wants to be in the house-renting business; therefore, miners are encouraged to build their own homes or otherwise solve their own housing problems. The ratio of miners living in company houses is declining, although the recent shortages of building materials and labor have retarded the transition. The average annual earnings of the miner are sufficiently high to permit the acquisition by purchase or rental of suitable housing equipped with running water and other modern conveniences.

Unfortunately we have been unable to secure any reliable figures which would accurately reflect the exact number of miners' houses which are equipped with facilities for running water. The latest estimate of the United States Bureau of the Census shows that 30 percent of all United States homes have no running water. It is known, however, that the percentage for miners' homes favorably compares with this over-all figure. In the panhandle district of northern West Virginia, approximately 20 percent of its 22,000 miners rent company houses at \$2.50 per month per room. These houses are electrically lighted, have running water and are each surrounded by large garden plots. One company in the northern Appalachian mining region has 1,875 miners who own their own homes valued in the aggregate at \$4,540,000. Outside of the Appalachian mining regions, there are comparatively few company-owned houses—none in several mining States in the Midwest and far West.

By outlining the above facts, we do not intend to convey the idea that there is no housing problem in the coal-mining industry. The owners and operators recognize that there is much that can be done to improve the housing facilities of the miners—and much is being done to achieve this end. It is not, however, a proper conclusion to assume that the housing problem of the bituminous coal-mining industry is peculiar to the industry. As a matter of fact, the housing problem in the coal industry is probably less serious than it is in the Nation as a whole.

The CHAIRMAN. Thank you very much.

Senator DONNELL. I would like to thank you on behalf of this side of the table, Mr. Haley.

Mr. HALEY. Thank you, too, Mr. Chairman. You have been very indulgent.

The CHAIRMAN. I wish to put into the record a statement from the New York State Board of Mediation and also a survey and analysis prepared by the New York State Board of Mediation.

(The documents referred to are as follows:)

#### NEW YORK STATE BOARD OF MEDIATION—STATEMENT ON NEW FEDERAL LABOR LAW

##### I. NOTICE TO STATE AGENCIES OF EXISTENCE OF DISPUTE

1. Section 8 (d) of National Labor Relations Act, as amended by the Taft-Hartley law, provides that no party shall terminate or modify a contract unless it serves a 60-day notice on the other party and, among other requirements, "notifies the Federal Mediation and Conciliation Service within 30 days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time \* \* \*."

2. Section 108 of the administration bill provides for notification of contract termination or modification to the United States Conciliation Service. However, no provision is made for notification to an active State mediation agency.

3. We urge that if notice of a contract termination or modification to a Federal conciliation agency is required by the new legislation, then simultaneous notice to an active State mediation agency should also be required for the following reasons:

(a) State mediation agencies are performing an important and essential part of the dispute-settlement work in many of the largest industrial States.

In 1947 State mediation agencies handled 9,025 mediation cases whereas the Federal Service handled 11,338. With respect to arbitration cases, the State agencies handled 1,939, the Federal Service only 686. State agencies intervened in 1,184 strikes and the Federal Service in 2,113.

(b) The notice to States have enabled these agencies to increase their ability to handle and settle disputes within their jurisdiction.

The case load of the New York State Board increased during the last 3 years as follows:

*Mediation cases handled.*—1946, 643; 1947, 1,181; 1948, 1,522. In addition, the New York State board handled 1,500 arbitration cases in 1948.

(c) Mediation is a voluntary, not a law-enforcing, process. The "jurisdiction" of State agencies, meaning the area in which their voluntary services are offered, involves a substantial number of businesses which are engaged in interstate commerce. State agencies, through continued receipt of dispute notices, can continue to offer their services to employers and unions well before the termination date has been reached.

4. We suggest that if the notice requirement of the administration bill is retained, it be amended to read:

"It shall be an unfair labor practice for an employer or a labor organization to terminate or modify a collective-bargaining contract covering employees in an industry affecting commerce, unless the party desiring such termination or modification notifies the United States Conciliation Service, and simultaneously notifies any active State or Territorial agency established to mediate and conciliate disputes within the State or Territory where that dispute occurred, of the proposed termination or modification 30 days prior to the expiration date of the contract, or 30 days prior to the time it is proposed to make such termination or modification."

##### II. DEFINING AREA WITHIN WHICH FEDERAL SERVICE SHOULD NOT OFFER FACILITIES

1. The Taft-Hartley law (sec. 203 (b) ) provides:

"The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties."

2. The administration bill (sec. 202 (a) ) carries no such stipulation but simply states:

"The Director is authorized to establish suitable procedures for cooperation with State and local mediation agencies and to enter into agreements with such State and local mediation agencies relating to the mediation of labor disputes whose effects are predominately local in character."



3. We urge that this section of the administration bill be amended to read:

"The Director is authorized to establish suitable procedures for cooperation with State and local mediation agencies and to enter into agreements with such State and local mediation agencies. The Director shall avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties."

4. We believe this amendment should be adopted in the interest of preserving cooperative arrangements and agreements which have already been established between the State and Federal services and which are working satisfactorily to both agencies and to the parties concerned.

For instance, the Director of the Federal Mediation and Conciliation Service has stated in his first annual report:

"As this report is written both agencies are well pleased with its operations. The New York agreement represents a great stride forward in State-Federal relations, and the Service will earnestly strive to achieve, in those few States where equally satisfactory cooperative agreements have not yet been worked out, the same relations of mutual confidence, respect and cooperation which exist in New York."

#### STATE MEDIATION AND CONCILIATION AGENCIES, 1947

(Survey and analysis prepared by New York State Board of Mediation, New York City, N. Y.)

#### SURVEY OF ACTIVITIES OF STATE MEDIATION AND CONCILIATION AGENCIES

The information contained in Bulletin 91 (United States Department of Labor, Division of Labor Standards, 1947) outlining the State laws providing for mediation and conciliation left many questions unanswered concerning the nature of the services offered by the State agencies. For example, which of these laws had been put into operation, how active were each of the services, how large a personnel was involved, what were the salaries, etc. To answer these questions we devised a questionnaire which was sent to all the States named in Bulletin 91 as having any type of mediation service. The States have been most cooperative in answering the questionnaire, and the information that we have obtained follows.

There are a number of inherent weaknesses in making a survey of this kind. Probably the principal one is the different meaning which various States place on the word mediation or conciliation. Because of this difference the case statistics may not be truly comparable. Such weaknesses can be corrected only through extensive discussions with representatives of each State, and obviously that was not possible. However, by and large, the information contained herein should prove interesting and informative.

The questionnaire was sent to the Federal Mediation and Conciliation Service to permit comparison of their activities and those of the State agencies. Accordingly, the Federal Service is listed with the State services in all the tables.

The principal subjects covered by the survey include the following:

1. Location of offices.
2. Names and job titles of full-time officials.
3. Job titles and corresponding salary ranges of full-time employees.
4. Method of recruitment and appointment.
5. Amount of appropriations for personnel and for other expenses.
6. Case statistics, including mediation, arbitration, strikes and Taft-Hartley notices.
7. Existence of panel arbitrators and whether the same persons serve as mediators and arbitrators.

Following a presentation of the results of this survey will be found the complete tables which contain all the information obtained in answer to the questionnaire. These tables speak for themselves. However, in the interest of pointing up the information and making it useful, some analysis has been made of the more important items.

TABLE 1. LOCATION OF BOARDS AND THEIR OFFICERS, 1947

This table contains the names and addresses of the various State agencies. It also includes the names and titles of the officials. Cities in which offices of the board or agency are located are indicated in parenthesis. The Federal Service,

as expected, maintains offices in the largest number of cities (29 in all). Six States have offices in more than one city. These States are California, Michigan, New Jersey, New York, Washington, and Wisconsin.

TABLE 2. JOB CLASSIFICATIONS AND SALARIES OF BOARD PERSONNEL, 1947

This table shows, by States, the job titles of staff members, the number within each classification, and the salary ranges. Wherever indicated, the figures in parenthesis are the salaries including cost-of-living bonus.

The Federal Service, of course, has the largest staff, employing 380 persons. The State employing the most people is New York, with a total of 40. Next in order comes Michigan with 25, New Jersey with 15, and Pennsylvania with 14.

Listed in the order of the numerical size of their staffs, the agencies fall as follows:

	<i>Size of staff</i>		<i>Size of staff</i>
Federal Service-----	380	Hawaii (employment relations board)-----	5
New York-----	40	Alaska-----	4
Michigan-----	25	Arkansas-----	4
New Jersey-----	15	New Hampshire-----	4
Pennsylvania-----	14	North Carolina-----	4
Puerto Rico-----	13	Washington-----	4
Indiana-----	12	Colorado-----	3
Massachusetts-----	12	Maine-----	3
Wisconsin-----	12	Maryland-----	3
Connecticut-----	11	Rhode Island-----	3
California-----	9	South Carolina-----	3
Hawaii (commission of industrial and labor relations)-----	8	Georgia-----	1
Illinois-----	7	Kentucky-----	1
Minnesota-----	6		

Of the seven States which have board members, four pay their members on a per-diem basis. They can be summarized as follows: New York, \$28.75 per day plus expenses; Wisconsin, \$6,500 per year plus expenses; New Jersey, \$25 per day plus expenses; Massachusetts, \$6,000 per year; Connecticut, \$20 per day in lieu of expenses; Michigan, \$20 per day, not to exceed \$5,000, plus expenses; Hawaii (employment relations board), expenses only.

The core of most State agencies is the mediator and the conciliator. The position of mediator is described in some States as conciliator, investigator, mediation agent, reporter, and technical adviser. However, the answers to the questionnaire indicated a substantial similarity of purpose among all these titles. In some cases, the duties of the position extended to other functions in the Department of Labor which are unrelated to mediation. In Michigan, for example, one of the functions of the board is to conduct elections if mediation fails. In Minnesota, the mediator may decide representation questions through hearings or elections.

In the more active mediation services, it appears that most of the work is handled by full-time staff mediators with the most important cases being assigned to board members. The staffs of less active services are often limited to one mediator and/or the commissioner of labor. In many instances, there are no employees assigned exclusively to mediation work, such service being a relatively minor function of the State department of labor.

A comparison of salaries of such persons is not completely accurate because the duties are not identical. However, with that reservation, a comparison can be made of the salary ranges for this type of work. Among the active boards these ranges (which include supervisors who mediate) extend from \$5,232-\$10,330 in the Federal service down to \$2,400 in Georgia. Taken in order, the agencies fall as follows:

	<i>Salary range of mediators</i>		<i>Salary range of mediators</i>
Federal service-----	\$5,232-\$10,330	Minnesota-----	\$4,404-\$1,980
Hawaii (employment relations board)-----	8,580- 9,580	Michigan-----	4,020- 4,740
New York-----	5,650- 8,400	Rhode Island-----	4,380
California-----	5,496- 7,728	Indiana-----	3,300- 4,200
Washington-----	3,600- 6,000	Puerto Rico-----	3,000- 3,900
Connecticut-----	5,394- 5,944	Pennsylvania-----	3,192- 3,792
Illinois-----	4,320- 5,520	Massachusetts-----	3,240- 3,780
North Carolina-----	4,000- 5,400	South Carolina-----	3,600
New Jersey-----	3,000- 5,100	Colorado-----	2,400- 2,850
		Georgia-----	2,400

TABLE 3. METHOD OF RECRUITMENT AND APPOINTMENT OF BOARD PERSONNEL AND ANNUAL APPROPRIATIONS, 1947

This table indicates that recruitment of board personnel is by appointment, competitive examination, or a combination of the two. In one State, North Carolina, the commissioner of labor is elected. In California and Puerto Rico, all board personnel are appointed following a competitive examination. In Pennsylvania, all personnel are appointed by the Governor. A more common arrangement is for only board members or commissioners to be appointed by the governor. Personnel having no administrative responsibility are generally recruited from civil-service lists, although in some States such personnel are appointed by the board or commissioner.

The more active agencies functioning exclusively as mediation boards, usually receive specific appropriations for their operations. Less active services employing only a few persons, generally have no separate budget, operating under the appropriation allocated to the State department of labor.

The Federal service has the largest appropriation, amounting to over \$2,000,000 for 1948. Among the States, New York is highest with \$170,000, followed by Michigan with \$140,000, Minnesota with \$70,000, Indiana with \$63,000 and New Jersey \$60,000. (The foregoing figures are approximate.)

TABLE 4. ARBITRATION PRACTICES AND PROCEDURES, 1947

The question "Do the same persons sometimes serve as mediators and as arbitrators?" was answered in the affirmative by 9 agencies and in the negative by 12. Six of the nine agencies answering affirmatively stated, "Yes, but not encouraged."

Only eight States maintain outside panels of arbitrators utilized by the State agency. The number on such arbitration panels varies from 12 in California to 65 in New York. The other States maintaining such panels are Massachusetts, Minnesota, New Jersey, North Carolina, Rhode Island, and Washington.

New York and New Jersey were the only States in which a substantial number of arbitrations was handled by panel members. In New York, 659 out of 1,203 arbitration cases were handled by panel members and in New Jersey 66 out of 105 fell within the same category. North Carolina, whose law establishes a separate arbitration service within the department of labor, reported that its 35 arbitrations were all handled by its panel.

TABLE 5. CASE STATISTICS

This table gives all figures reported by the States for mediation cases, arbitration cases, intervention in strikes, and Taft-Hartley notices received.

The number of mediation cases handled in 1947 by all States and Territories was 9025. This almost equaled the number handled by the Federal service in the entire country, which amounted to 11,338. Michigan with 3,944, Pennsylvania with 1,078, and New York with 1,070 handled the greatest number of mediation cases for 1947 among the States. A possible reason for the disproportionately high figure for Michigan is a statute requiring the submission of all disputes to the mediation board before a strike or lock-out may be called. In the order of mediation cases handled in 1947, the active States appear as follows:

<i>Mediation cases</i>		<i>Mediation cases</i>	
Michigan	3,944	Colorado	100
Pennsylvania	1,078	Puerto Rico	100
New York	1,070	Washington	58
Minnesota	860	Illinois	50
Massachusetts	455	California	49
Indiana	286	South Carolina	23
New Jersey	232	Alaska	20
Wisconsin	180	Hawaii (Commission of Labor	
North Carolina	168	and Industrial Relations)	20
Rhode Island	150	Georgia	15
Connecticut	146	Oklahoma	12

Arbitration cases handled in 1947 totaled 1,939 for all the States and Territories as compared with 686 handled by the Federal service. Of the States' total of 1939, New York handled 1,203 arbitration cases. Therefore almost half of all



labor arbitrations handled through the offices of public agencies in the United States were processed by the New York board. Following New York were Massachusetts with 432, New Jersey with 105, Puerto Rico with 65, Connecticut with 37, and North Carolina with 35. Other States having 30 or fewer arbitration cases were Minnesota, Wisconsin, Alaska, California, Colorado, Georgia, and Pennsylvania.

The number of interventions in strikes in 1947 by all State mediation agencies totaled 1,184. The Federal service intervened in almost twice this number, with a total of 2,113. Among the State agencies, Pennsylvania with 228, Michigan with 205, and New York with 195 intervened most frequently in strike situations. In order of interventions, the remaining States were Massachusetts, Puerto Rico, New Jersey, Rhode Island, Indiana, Illinois, North Carolina, Georgia, California, Connecticut, Hawaii (Commission of Labor and Industrial Relations), Washington, South Carolina, Alaska, and Colorado.

The period of time covered by the Taft-Hartley notices was not the same for all States and therefore no useful comparison can be made. However, the figures indicate that Michigan, California, New Jersey, and New York are far ahead of the other States in number of notices received, accounting for over 9,000 of the total of 14,583 received by all States. The Federal service reported 12,253 notices received.

#### CONCLUSIONS

From the above tables, it is possible to separate the State mediation agencies into several classifications. Following may be found such a grouping:

*States in which no authority or board exists.*—Delaware, Florida, Idaho, Kansas, Mississippi, Missouri, New Mexico, Nebraska, Tennessee, Texas, Wyoming.

*States in which there is a statutory provision for a mediation board but none has been appointed.*—Montana, New Hampshire.

*States which maintain active boards outside of the department of labor.*—Michigan, New Jersey.

*State which maintains inactive board outside the department of labor.*—Oregon.

*States which maintain active boards within the department of labor.*—Connecticut, Massachusetts, Minnesota, New York, Oklahoma.

*State which maintains inactive board within the department of labor.*—Maine.

*States in which mediation authority is vested directly in the department of labor and which are active.*—California, Colorado, Georgia, Illinois, Indiana, North Carolina, Pennsylvania, Rhode Island, South Carolina, Washington, Wisconsin, Alaska, Hawaii, Puerto Rico.

*States in which mediation authority is vested directly in the department of labor and which are inactive.*—Alabama, Arizona, Arkansas, Iowa, Kentucky, Louisiana, Maryland, Nevada, North Dakota, Ohio, South Dakota, Utah, Vermont, Virginia, West Virginia.

To summarize, it appears that there are 18 States and 3 Territories which maintain active and functioning mediation services. In addition, there are 17 States which have existing services, but which are inactive, and 2 States which provide in law for such a service but in fact have not established one. Finally there are 11 States with no provision either in law or in fact for mediation services.

In general, the active services seem to be concentrated in the industrial States, such as Michigan, New Jersey, Connecticut, Massachusetts, and New York. One exception to this general pattern is Ohio, which has an arbitration and mediation act but no personnel specifically charged with its administration. The inactive services are most often found in the Southern and Western States such as Alabama, Arizona, Arkansas, Iowa, Nevada, and North Dakota. There are also exceptions here, in the case of Oklahoma. From the answers to the questionnaire from those States which maintain inactive services it would appear that the Federal service handles all mediation cases arising in these areas.

For the detailed information obtained from the questionnaires, attention is directed to the tables which follow and which conclude this survey.

TABLE 1.—LOCATION OF BOARDS AND THEIR OFFICERS, 1947

Alabama: Department of Labor, P. O. Box 2046, Montgomery, Ala., R. R. Wade, director.

Arizona: Industrial Commission of Arizona, State Labor Department, Phoenix,

- Ariz.: J. J. O'Neill, chairman; Fred E. Edwards, member; Ray Gilbert, member; John E. Gavin, secretary; J. N. Brennen, manager; Daniel S. Davis, chief deputy; Mrs. Della P. Meyer, director, Women's Division.
- Arkansas: Department of Labor, State of Arkansas, Little Rock, Ark.; M. E. Goss, commissioner; S. P. Dixon, deputy commissioner.
- California: California Conciliation Service, Department of Industrial Relations, 965 Mission Street, San Francisco 3, Calif. (San Francisco; Los Angeles); Paul Scharrenberg, director of industrial relations; Glenn A. Bowers, supervisor, California State Conciliation Service.
- Colorado: Industrial Commission of Colorado, State Capitol Annex, Denver 2, Colo.; William I. Reilly, chairman; Weldon W. Tarbell, commissioner; H. E. Dill, commissioner; Feay B. Smith, secretary and executive director.
- Connecticut: Connecticut State Board of Mediation and Arbitration, State Office Building, Hartford, Conn.; Burton H. Camp, chairman; Samuel F. Curry, member; W. Stewart Clark, member; Rev. Joseph F. Donnelly, alternate chairman; Mitchell Sviridoff, alternate member; Arthur E. Allen, alternate member; Robert A. Cronin, mediation secretary.
- Georgia: State Labor Department, Inspection Division, 616 State Office Building, Atlanta 3, Ga., Telephone: Alpine 2116; Ben T. Huiet, commissioner; E. M. Beaton, chief inspector; James J. Page, Jr., conciliator.
- Illinois: Illinois Mediation and Conciliation Service, Department of Labor, Capitol Building, Springfield, Ill.; John G. Henneberger, acting chief conciliator.
- Indiana: Indiana Division of Labor, 225 Statehouse, Indianapolis 4, Ind.; Charles W. Kern, commissioner of labor and director of mediation.
- Iowa: Bureau of Labor, State of Iowa, Des Moines, Iowa; Charles W. Harness, labor commissioner.
- Kentucky: Department of Industrial Relations, Division of Labor Conciliation, New State Office Building, Frankfort, Ky.; George C. Burton, Commissioner of Industrial Relations.
- Louisiana: Department of Labor, State of Louisiana, Baton Rouge, La.
- Maine: Board of Arbitration and Conciliation, Department of Labor and Industry, 188 State Street, Portland, Maine; Dr. Raymond J. Malone, chairman; Moore Greenwood, member; Philip T. Place, secretary.
- Maryland: Department of Labor and Industry, 12 East Mulberry Street, Baltimore 2, Md.; Joseph F. DiDomenico, commissioner; Margaret W. Kimble, deputy commissioner.
- Massachusetts: Board of Conciliation and Arbitration; statehouse, Boston, Mass.; Gen. Charles H. Cole, chairman; Alexander G. LaJoie, member; Benjamin G. Hull, member.
- Michigan: Michigan Labor Mediation Board, 226 South Walnut Street, Box 552, Lansing, Mich. (Lansing; Detroit; Muskegon); Philip Weiss, chairman; John F. Frederick, member; R. P. Cranson, member; Carlyle A. Gray, executive secretary.
- Minnesota: Division of Conciliation, Department of Labor and Industry, 304 State Capitol Building, St. Paul 1, Minn.; Leonard W. Johnson, State labor conciliator; Harry L. Hanson, deputy labor conciliator.
- Montana: Department of Agriculture, Labor, and Industry, Helena, Mont.; Albert Kruse, commissioner.
- Nevada: Labor Commissioner, State of Nevada, Carson City, Nev.; R. N. Gibson, commissioner.
- New Hampshire: Bureau of Labor, State of New Hampshire, Concord, N. H.; William H. Riley, commissioner.
- New Jersey: New Jersey State Board of Mediation, 1060 Broad Street, Newark, N. J. (Newark; Camden); Walter T. Margetts, Jr., chairman; Dr. Guy L. Hilleboe, public member; Rev. Wm. L. Tucker, public member; Clarence Britten, management member; Douglas J. Peake, management member; Sal Maso, labor member; (appointment pending), labor member, Allan Weisenfeld, secretary.
- New York: New York State Board of Mediation, 270 Broadway, New York 7, N. Y. (New York; Albany; Buffalo; Syracuse; Arthur S. Meyer, chairman; Rt. Rev. John P. Boland, member; Harry J. Carman, member; Ralph E. Kharas, member; Mabel Leslie, member; Merlyn S. Pitzele, member; Burton B. Turkus, member; Frederick H. Bullen, executive secretary; Arthur Stark, assistant executive secretary; Irving T. Bergman, counsel.
- North Carolina: Conciliation Service, North Carolina Department of Labor, Rooms 406-407 Labor Building, Raleigh, N. C.; Forrest H. Shuford, commissioner of labor.

- North Dakota : Commissioner of Agriculture and Labor, State Capitol, Bismarck, N. Dak.; Math Dahl, commissioner; H. R. Martinson, deputy commissioner.
- Ohio : Industrial Commission of Ohio, Columbus 15, Ohio; Geo. L. Coffinberry, chairman; Stanley S. Stewart, secretary.
- Oklahoma : Department of Labor, State of Oklahoma, State Capitol, Oklahoma City 5, Okla.; Jim Hughes, commissioner of labor; Frank A. Kerr, assistant commissioner.
- Oregon : State Board of Conciliation, % Bureau of Labor, 615 Southeast Alder Street, Portland 14, Oreg.; Walter H. Evans, chairman; Stewart Weiss, management member; John O'Neill, labor member; Gerald C. Knapp, executive secretary.
- Pennsylvania : Bureau of Mediation, Department of Labor and Industry, 437 South Office Building, Harrisburg, Pa.; Philip F. Bolen, acting director.
- Rhode Island : Division of Labor Relations, Rhode Island Department of Labor, Room 324, Statehouse, Providence, R. I.; Joseph T. Cahir, acting director of Labor and chief of division of labor relations; Vincent P. Colavecchio, technical adviser.
- South Carolina : South Carolina Department of Labor, Columbia, S. C.; Wm. Fred Ponder, commissioner of labor.
- South Dakota : Industrial Commissioner, State of South Dakota, Pierre, S. Dak.; Sigurd Anderson, attorney general, industrial commissioner; Phil Rensvold, deputy commissioner.
- Utah : Industrial Commission, State of Utah, Salt Lake City, Utah; Daniel Edwards, commissioner; B. A. Fowler, secretary.
- Vermont : Department of Industrial Relations, State of Vermont, Montpelier, Vt.; Howard E. Armstrong, commissioner; Albert A. Fraser, deputy commissioner.
- Virginia : Department of Labor and Industry, Commonwealth of Virginia, Richmond 6, Va.; John Hopkins Hall, Jr., commissioner; Harry J. Smith, director of research and statistics.
- Washington : Washington State Mediation Service, 311 New Armory Building, 305 Harrison Street, Seattle 9, Wash. (Seattle; Spokane; Tacoma); Bob McClelland, supervisor of mediation.
- West Virginia : State Department of Labor, Charleston 1, W. Va.; Chas. Sattler, commissioner.
- Wisconsin : Wisconsin Employment Relations Board, State Capitol, Madison 2, Wis. (Madison; Milwaukee); Lawrence E. Gooding, chairman; John E. Fitzgibbon, member; Henry C. Rule, member; Arvid Anderson, executive secretary; Walter Kwapil, assistant executive secretary; Beatrice Lampert, counsel (attorney general's office).
- Alaska : Department of Labor, P. O. Box 2141, Juneau, Alaska; Henry A. Benson, commissioner.
- Hawaii :  
 Commission of Labor and Industrial Relations, Building A—Iolani Palace, Honolulu 2, T. H. 58059; George H. Moody, chairman; Rudolph Eskovitz, member; Dr. Lenora N. Bilger, member; Alva E. Steadman, member; Paul Ellis, member; E. B. Peterson, director; Robt. Sroat, labor law executive; Ruth W. Loomis, counsel.  
 Hawaii Employment Relations Board, Territorial Building, Honolulu, T. H. 54921. Ronald B. Jamieson, chairman; Herman G. Lemke, member; Marshall L. McEuen, member.
- Puerto Rico : Mediation, Conciliation, and Arbitration Service, Department of Labor, San Juan, P. R.; Adolfo D. Collazo, director; Julio Machuca, assistant director.
- Federal Mediation and Conciliation Service, Department of Labor Building, Fourteenth Street and Constitution Avenue, Washington 25, D. C.; (Akron, (Ohio); Atlanta; Baltimore; Birmingham (Ala.); Boston; Chattanooga; Chicago; Cincinnati; Cleveland; Dallas; Denver; Des Moines; Detroit; Houston; Indianapolis; Kansas City (Mo.); Los Angeles; Milwaukee; Minneapolis; New Orleans; New York; Philadelphia; Pittsburgh; Portland (Oreg.); Richmond (Va.); St. Louis; San Francisco; Seattle; Washington, D. C.); Cyrus S. Ching, Director; Howard T. Colvin, Associate Director; William N. Margolis, Assistant Director; Peter Seitz, General Counsel; Martin J. O'Connell, Director of Field Operations.



Table 2.—*Job classifications and salaries of board personnel, 1947*

State	Job titles	Number	Salaries
California.....	Supervisor of conciliation.....	1	\$6,360 to \$7,728.
	Conciliator.....	4	\$5,496 to \$6,672.
	Senior stenographer.....	1	\$2,640 to \$3,216.
	Intermediate stenographer.....	2	\$2,280 to \$2,772.
	Junior stenographer.....	1	
Colorado.....	Investigator.....	1	\$2,400 to \$2,850.
	Senior stenographer <sup>1</sup> .....	2	\$2,210.
Connecticut.....	Board member.....	3	\$20 per day, in lieu of expenses.
	Alternate board member.....	3	Do.
	Mediation secretary.....	1	\$3,600 to \$4,500 (\$4,140 to \$5,100). <sup>2</sup>
	Mediation agent.....	2	\$4,740 to \$5,240 (\$5,394 to \$5,944). <sup>2</sup>
	Stenographer, grade 2.....	1	\$1,500 to \$1,920 (\$1,890 to \$2,352). <sup>2</sup>
	Hearing stenographer, grade 2.....	1	\$2,280 to \$3,003 (\$2,688 to \$3,480). <sup>2</sup>
Georgia.....	State conciliator.....	1	\$2,400.
	Assistant conciliator <sup>1</sup> .....		\$7 per day and expenses.
Illinois.....	Chief, mediation and conciliation service.....	1	\$5,520.
	Conciliator.....	5	\$4,320 to \$5,520.
	Secretary to chief conciliator.....	2	\$1,920 to \$2,460.
Indiana.....	Commissioner.....	1	\$7,200.
	Labor mediator.....	7	\$3,300 to \$4,200.
	Principal stenographer.....	1	\$2,520.
	Stenographer.....	3	\$1,800 to \$2,250.
Kentucky.....	Commissioner of industrial relations.....	1	\$5,000.
Maine.....	Board chairman.....	1	\$5 per day and expenses.
	Board secretary.....	1	Do.
	Board member.....	1	Do.
Maryland.....	Commissioner.....	1	\$5,000.
	Deputy commissioner.....	1	
	Mediator.....	1	
Massachusetts.....	Board member (commissioner).....	3	\$6,000.
	Industrial relations adjuster (conciliator).....	5	\$3,240 to \$3,780.
	Principal clerk.....	1	\$2,400 to \$2,760.
	Hearing stenographer.....	3	\$2,400 to \$2,760.
	Expert assistant <sup>1</sup> .....		\$15 per day.
Michigan.....	Board member.....	3	\$20 per day, not to exceed \$5,000 plus expenses.
	Executive secretary.....	1	\$2,170.
	Coordinator of conciliation.....	1	\$4,220.
	Conciliator III.....	9	\$4,020 to \$4,740.
	Labor elections supervisor II.....	2	\$3,360 to \$3,840.
	Executive I.....	1	\$2,760 to \$3,240.
	Stenographer-executive I.....	1	\$2,760 to \$3,240.
	Hearings reporter I.....	1	\$2,760 to \$3,240.
	Stenographer-clerk A.....	2	\$2,340 to \$2,580.
	Stenographer-clerk A-2.....	1	\$2,160 to \$2,400.
	Typist-clerk C-1.....	2	\$1,860 to \$2,100.
	Janitor C <sup>1</sup> .....	1	\$633 per year.
Minnesota.....	Labor conciliator.....	1	\$6,000.
	Deputy labor conciliator.....	1	\$4,404 to \$4,980.
	Assistant labor conciliator.....	4	\$4,404 to \$4,980.
	Special conciliator <sup>1</sup> .....		
New Hampshire.....	Commissioner.....	1	\$4,000.
	Board member.....	3	
New Jersey.....	Board member.....	7	\$25 per day, plus expenses.
	Secretary (also mediator first class).....	1	\$5,700.
	Labor mediator.....	3	\$3,000 to \$5,100.
	Senior clerk-stenographer.....	1	\$1,800 to \$2,160.
	Clerk-stenographer.....	3	\$1,200 to \$1,800.
New York.....	Board member.....	7	\$25 (28.75) <sup>2</sup> per day, plus expenses.
	Executive secretary.....	1	\$9,000 (\$9,850). <sup>2</sup>
	Assistant executive secretary.....	1	\$6,800 (\$7,540). <sup>2</sup>
	Counsel.....	1	\$8,000 (\$8,800). <sup>2</sup>
	Supervising labor mediator.....	4	\$6,250 to \$7,625 (\$6,962 to \$8,409). <sup>2</sup>
	Labor mediator.....	12	\$5,000 to \$6,200 (\$5,650 to \$6,910). <sup>2</sup>
	Principal stenographer.....	1	\$2,520 to \$3,120 (\$2,898 to \$3,582). <sup>2</sup>
	Senior stenographer.....	5	\$2,040 to \$2,610 (\$2,346 to \$3,036). <sup>2</sup>
	Stenographer.....	3	\$1,840 to \$2,560 (\$2,116 to \$2,944). <sup>2</sup>
	Senior clerk.....	1	\$2,040 to \$2,640 (\$2,316 to \$3,036). <sup>2</sup>
	Clerk.....	1	\$1,600 to \$2,200 (\$1,840 to \$2,530). <sup>2</sup>
	Telephone operator.....	1	\$1,600 to \$2,200 (\$1,840 to \$2,530). <sup>2</sup>
	Public administration intern.....	2	\$2,400 (\$2,760). <sup>2</sup>
North Carolina.....	Arbitration panel member.....	16	\$25 per day, plus expenses, borne equally by parties.
	Senior conciliator.....	1	\$5,400.
	Conciliator.....	1	\$4,200.
	Junior conciliator.....	1	\$4,000.
	Principal stenographer.....	1	\$1,800.

See footnotes, p. 2963.

TABLE 2.—*Job classification and salaries of board personnel, 1947—Continued*

State	Job titles	Number	Salaries
Pennsylvania.....	Director.....	1	\$4,728.
	Mediator.....	11	\$3,192 to \$3,792.
	Senior stenographer.....	1	\$1,596 to \$1,932.
	Stenographer-clerk.....	1	\$1,428 to \$1,596.
Rhode Island.....	Acting director of labor.....	1	\$6,360.
	Technical adviser.....	1	\$4,380.
	Principal clerk-typist.....	1	\$2,280.
South Carolina.....	Commissioner.....	1	\$5,000.
	Conciliator.....	2	\$3,600.
Washington.....	Mediation supervisor.....	1	\$4,800 to \$6,000.
	Mediator.....	2	\$3,600 to \$4,800.
	Secretary.....	1	\$2,400 to \$2,750.
	Clerk-typist.....	1	\$2,100 to \$2,400.
Wisconsin.....	Board member.....	3	\$6,500 plus travel expenses.
	Executive secretary.....	1	\$4,900.
	Assistant executive secretary.....	1	\$3,900.
	Counsel.....	1	
	Reporter.....	2	\$3,200 to \$3,500.
	Stenographer.....	3	\$1,800 to \$2,160.
	Clerk (only part of the board's time and personnel are engaged in mediation work.).....	1	\$2,160.
Alaska.....	Commissioner of labor.....	1	\$6,600.
	Deputy commissioner.....	1	\$5,500.
	Inspector.....	1	\$3,933.
	Stenographer.....	1	\$3,146.
Hawaii.....	Commission of labor and indus- trial relations:		
	Commission members.....	5	Serve without pay; receive travel expenses.
	Director of labor and indus- trial relations.....	1	Salaries received are for the over- all operations of the depart- ment of which the mediation service involves approximately 16 to 20 percent of active time.
	Labor law executive.....	1	
	Counsel.....	1	
	Employment relations board:		
	Board member.....	3	Serve without pay; receive travel expenses.
	Conciliator.....	1	\$8,280 to \$9,280 (\$8,580 to \$9,580). <sup>2</sup>
	Stenographer.....	1	\$3,095 to \$3,715 (\$3,395 to \$4,015). <sup>2</sup>
Puerto Rico.....	Director.....	1	\$5,400.
	Assistant director.....	1	\$4,200.
	Labor arbitrator II.....	1	\$3,900.
	Labor arbitrator I.....	1	\$3,360.
	Labor conciliator.....	2	\$3,000.
	Stenographer reporter.....	1	\$2,280.
	Clerk-stenographer.....	5	\$1,140 to \$1,560.
	Clerk.....	1	\$1,050.
Federal Mediation and Conciliation Service.	Director.....	1	\$12,000.
	Associate Director.....	1	\$10,305 to \$10,330.
	Assistant Director.....	1	\$10,305 to \$10,330.
	General counsel.....	1	\$10,305 to \$10,330.
	Director of field operations.....	1	\$10,305 to \$10,330.
	Regional director.....	8	\$10,305 to \$10,330.
	Assistant regional director.....	7	\$8,509 to \$9,706.
	Director of administrative man- agement.....	1	\$8,509 to \$9,706.
	Associate director of field opera- tions.....	1	\$8,509 to \$9,706.
	Technical commissioner.....	1	\$8,509 to \$9,706.
	Assistant director of administra- tive management.....	1	\$7,432 to \$8,389.
	Assistant director of field opera- tions.....	1	\$7,432 to \$8,389.
	Executive secretary, labor-man- agement panel.....	1	\$7,432 to \$8,389.
	Commissioner, CAF-15.....	8	\$10,305 to \$10,330.
	Commissioner, CAF-14.....	10	\$8,509 to \$9,706.
	Commissioner, CAF-13.....	77	\$7,432 to \$8,389.
	Commissioner, CAF-12.....	112	\$6,235 to \$7,192.
	Commissioner, CAF-11.....	26	\$5,232 to \$6,235.
	Attorney.....	1	\$6,235 to \$7,192.
	Chief, budget and finance.....	1	\$4,479 to \$5,232.
	Administrative assistant.....	3	\$2,974 to \$4,479.
	Personnel technician.....	1	\$3,727 to \$4,479.
	Docket clerk.....	2	\$2,724 to \$4,479.
	Statistical clerk.....	5	\$2,724 to \$4,479.
	Fiscal auditor.....	1	\$3,727 to \$4,479.
	Secretary.....	12	\$2,974 to \$4,479.
	Economic editor.....	1	\$3,727 to \$4,479.
	Management service clerk.....	4	\$3,351 to \$4,103.
	Personnel assistant.....	2	\$2,974 to \$3,727.

See footnotes, p. 2963.

TABLE 2.—*Job classification and salaries of board personnel, 1947—Continued*

State	Job titles	Number	Salaries
Federal Mediation and Conciliation Service—Continued	Fiscal accounting clerk.....	2	\$2,724 to \$3,727.
	Audit clerk.....	7	\$2,724 to \$3,727.
	Purchasing clerk.....	1	\$2,974 to \$3,727.
	Clerk.....	4	\$2,284 to \$3,727.
	Stenographer.....	9	\$2,724 to \$3,727.
	Clerk-stenographer.....	41	\$2,498 to \$3,175.
	Clerk-typist.....	14	\$2,724 to \$3,175.
	Typist.....	1	\$2,724 to \$3,175.
	Property and supply clerk.....	1	\$2,724 to \$3,175.
	Mail and file clerk.....	1	\$2,724 to \$3,175.
	File clerk.....	3	\$2,498 to \$2,949.
	Telephone operator-receptionist.....	3	\$2,498 to \$2,949.
	Messenger.....	1	\$2,152 to \$2,498.

<sup>1</sup> Part time.<sup>2</sup> Includes cost-of-living bonus.TABLE 3.—*Method of recruitment and appointment of board personnel and annual appropriations, 1947*

State	Method of recruitment and appointment of State board personnel	Budget 1947, 1948
California.....	State civil-service lists—open competitive examinations.	1947-48 (3½ months): Personnel, \$17,696; other, \$10,497. 1948-49: Personnel, \$36,088; other, \$17,563.
Colorado.....	Appointed by Governor.....	None set aside; about \$7,000 used.
Connecticut.....	Board members and alternates appointed by Governor. Mediation secretary and stenographic employees appointed by commissioner of labor following merit system examination. Mediation agents appointed in unclassified service by commissioner of labor with approval of board.	Appropriations for board activities included in over-all budget for department of labor.
Georgia.....	Appointed by commissioner of labor.....	Appropriation \$3,900 and expenses.
Illinois.....	Appointed by director of labor.....	No separate budget.
Indiana.....	Commissioner appointed by Governor; all others appointed by commissioner with consent of Governor.	\$63,000 per year.
Kentucky.....	Merit system.....	No specific appropriation; department funds available.
Maine.....	Appointed by Governor.....	None.
Maryland.....	Commissioner appointed by Governor. Deputy commissioner appointed after competitive promotional examination. All other employees appointed from civil-service lists based upon competitive examination.	No separate budget.
Massachusetts.....	Board members appointed by Governor. All other employees appointed from civil-service lists based upon competitive examination.	1946-47: Personnel, \$35,000; other, \$4,500. 1947-48: Personnel, \$37,740; other, \$5,425.
Michigan.....	Board members appointed by Governor (senate consent). Executive secretary and coordinator of conciliation appointed by board (exempt). All other employees appointed from civil-service lists based upon competitive examinations.	1947-48: Personnel, \$92,210; Other, \$54,830. 1948-49: Personnel, \$97,010; other, \$47,090.
Minnesota.....	State labor conciliator appointed by State legislature. Deputy and assistants appointed by civil-service department.	1947-48: Personnel, \$54,912; other, \$17,180.
New Hampshire.....	Commissioner appointed by Governor and board members.	
New Jersey.....	Board members appointed by Governor (senate consent). Secretary appointed by board. All other employees appointed from civil-service lists based upon competitive examination.	1946-47: Personnel, \$51,160; other, \$4,349. 1947-48: Personnel, \$51,760; other, \$4,915.
New York.....	Board members appointed by Governor (senate consent). Executive secretary, assistant executive secretary, and counsel appointed by board (exempt from civil-service). Supervising labor mediators, labor mediators, and all clerical and stenographic employees appointed from civil-service lists based upon competitive examination.	1947-48: Personnel, \$109,000, other, \$12,000. 1948-49: Personnel, \$150,000; other, \$22,000.



TABLE 3.—*Method of recruitment and appointment of board personnel and annual appropriations, 1947—Continued*

State	Method of recruitment and appointment of State board personnel	Budget 1947, 1948
North Carolina.....	Commissioner of labor elected every 4 years. All other employees appointed by commissioner subject to existing laws applicable.	1947: Personnel, \$15,600; other, \$5,900. 1948: Personnel, \$15,600; other, \$5,900.
North Dakota.....	Deputy labor commissioner appointed by commissioner; assists in mediation and conciliation service.	None.
Pennsylvania.....	Appointed by governor.....	1947: Total, \$53,735. 1948: Total, \$55,730.
Rhode Island.....	Civil-service examination.....	Budget: \$6,660 (salary of technical adviser and principal clerk-typist).
South Carolina.....	Recruitment and appointment by the commissioner.	Budget: Personnel, \$11,100; other, \$3,000.
Washington.....	All personnel appointed by the director of the department of labor and industries.	Operates under the appropriation allocated to the industrial relations division of the department of labor and industries.
Wisconsin.....	Civil-service examination by bureau of personnel.	General expenses, \$52,000.

TABLE 4.—*Arbitrations, practices, and procedures, 1947*

State	Same persons serve as mediators and as arbitrators?	Outside panel of arbitrators utilized by State board?	Number on such panel	Number of cases submitted to panel, 1947
California.....	Permissible under law, but is not encouraged except in unusual cases.	Yes.....	12	None.
Colorado.....	Yes.....	No.....		
Connecticut.....	do.....	do.....		
Georgia.....	do.....	do.....		
Illinois.....	do.....	do.....		
Indiana.....	No.....	Compulsory Public Utility Arbitration Act requires Governor to appoint panel with 20 members.		
Kentucky.....	Yes.....	No.....		
Maine.....	do.....	No.....		
Massachusetts.....	Yes, but not encouraged.....	Yes.....	35	No record.
Michigan.....	No.....	No.....		
Minnesota.....	do.....	Yes; but compensated by State.		
New Jersey.....	No; mediation work and arbitration work kept entirely separate.	Yes; paid by State where parties themselves do not pay arbitrator.	28	66.
New York.....	Yes; but not encouraged.....	Yes.....	65	In 1947, 659 out of 1,203 arbitration cases handled by panel members.
North Carolina.....	No.....	do.....	16	35.
North Dakota.....	Yes.....	No.....		
Oklahoma.....	do.....	do.....		
Oregon.....	No.....	do.....		
Pennsylvania.....	do.....	do.....		
Rhode Island.....	do.....	Yes.....	15	5.
South Carolina.....	do.....	No.....		
Washington.....	do.....	Yes.....	22	
Wisconsin.....	Yes, but not encouraged.....	No.....		
Alaska.....	Yes.....	do.....		
Hawaii.....	Commission of labor and industrial relations: Yes; but not encouraged. Employment relations board: No.	do.....		

TABLE 4.—*Arbitrations, practices, and procedures, 1947—Continued*

State	Same persons serve as mediators and as arbitrators?	Outside panel of arbitrators utilized by State board?	Number on such panel	Number of cases submitted to panel, 1947
Puerto Rico Federal Mediation and Conciliation Service.	Yes, but not encouraged. No.	No No (however, a file is maintained of the names of all individuals who are brought to the attention of the Service as being experienced arbitrators. When a request is received for the appointment of an arbitrator, it is the practice of the Service to seek to induce the parties to select the arbitrator of their choice from a list of 5 names chosen from the file of the Service).		

TABLE 5.—*Case statistics, 1947*

State	Mediation cases, 1947	Arbitration cases, 1947	Intervention in strikes, 1947	Taft-Hartley notices received		
				Number	Number of employers involved	Period covered by notices: June 1947 to—
Arizona	(1)	(1)	(1)	199	199	June 1948.
California	49	4	20	3,384	(1)	Do.
Colorado	<sup>2</sup> 100	4	1	<sup>2</sup> 150	(1)	July 1948.
Connecticut	146	37	14	203	<sup>2</sup> 456	May 1948.
Georgia	15	2	25	15	15	July 1948.
Illinois	<sup>3</sup> 50	0	<sup>3</sup> 50	175	(1)	Mar. 1948.
Indiana	286	(1)	51	664	(1)	June 1948.
Kentucky (fiscal)	6	1	2	(1)	(1)	
Maine	2	(1)	2	(1)	(1)	
Massachusetts	455	432	104	445	1,358	Mar 1948.
Michigan	3,944	0	203	4,043	(1)	July 1948.
Minnesota (fiscal)	860	30	(1)	<sup>2</sup> 550	(1)	June 1948.
New Jersey	232	105	75	1,308	(1)	May 1948.
New York	1,070	1,203	195	1,048	4,221	Mar. 1948.
North Carolina	168	35	37	87	93	Do.
North Dakota	1	0	0	6	(1)	May 1948.
Oklahoma	12	0	0	<sup>2</sup> 150	(1)	Do.
Oregon	0	0	0	186	940	June 1948.
Pennsylvania	1,078	1	228	683	1,381	Mar. 1948.
Rhode Island	150	0	65	61	85	May 1948.
South Carolina	23	0	7	50	50	June 1948.
Washington	58	0	8	310	1,090	Mar. 1948.
Wisconsin	<sup>2</sup> 180	16	(1)	<sup>2</sup> 800	(1)	Do.
Alaska	20	4	4	57	79	June 1948.
Hawaii:						
Commission of labor and industrial relations.	20	0	11	3	(1)	May 1948.
Employment relations board.	0	0	0	0	(1)	Do.
Puerto Rico	100	65	82	6	(1)	Mar. 1948.
Total	9,025	1,939	1,184	14,583		
Federal Mediation and Conciliation Service.	11,338	686	2,113	12,253	38,435	May 1948.

<sup>1</sup> No information.<sup>2</sup> Approximate figure.<sup>3</sup> Covers period from August 1947 through December 1947.

Senator DOUGLAS. I would like to put in the record, if I may, a statement from Local No. 1455 of the International Brotherhood of Electrical Workers in St. Louis, dealing with the question of professional employees.

The CHAIRMAN. It will be so ordered.

(The document referred to is as follows:)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

LOCAL No. 1455,

St. Louis, Mo., February 21, 1949.

Repeal of Taft-Hartley Act.

UNITED STATES SENATE LABOR COMMITTEE,

Washington, D. C.

GENTLEMEN: The International Brotherhood of Electrical Workers (AFL) Local 1455 representing approximately 1,200 employees in the States of Illinois, Missouri, and Iowa ask for outright repeal of the Taft-Hartley Act, reenactment of the Wagner Act without dilution, and, as a final step, consideration of the Wagner Act amendments.

We strongly oppose and ask that section 2 (12) (a) (b) and section 9 (b) of the Taft-Hartley Act dealing with so-called professional employees be deleted from any new labor legislation to be enacted by Congress.

I, for one, can speak freely in saying that the Taft-Hartley Act has not bettered labor-management relations despite what management says but has been a detriment to better relations.

In the case of the electric utility properties of the Union Electric Co. of Missouri and Union Electric Power Co. (operating in the States of Illinois, Missouri, and Iowa) these sections have been abused and used as a subterfuge to destroy our local union made up of "white-collar workers", who, above all, need a union.

An example of what has occurred under so-called professional employees follows:

In the year 1937 under the Employees' Mutual Benefit Association which was classed as company dominated, accountants and engineers were included and even supervisors then.

The first certification of a union on the properties of Union Electric Co. (which was an independent union and classed as company dominated) was on order of the National Labor Relations Board, dated August 27, 1941, case No. R-2544, which included all office, clerical, and sales employees. Included in the group were engineer and accountant classifications.

On May 24, 1946, the National Labor Relations Board certified the International Brotherhood of Electrical Workers (AFL), Case No. 14-R 1397, as representatives of all office, clerical, sales, professional, and technical employees. Again the engineering and accounting classifications were included and agreed to as technical jobs.

Trouble started with a threatened work stoppage after the Taft-Hartley Act became law and upon the expiration of the current labor agreement, March 31, 1948, because the company refused to bargain with the union because the bargaining unit, the company claimed, included professional employees and, therefore, could not be included with nonprofessional employees. Certain individuals appeared before the regional office of the National Labor Relations Board claiming that they were professional under the meaning of the act. There has always been some questions as to just who sent them to the National Labor Relations Board.

The union was willing to take the individuals who were already in the unit that the company had claimed professional and ask for an election on the basis that they vote for (1) inclusion in a unit of their own, (2) inclusion in the unit of office, clerical, sales, and technical employees, (3) no union at all. The company refused such an agreement but wanted to, and did, pack the unit with so-called professional and supervisory people for whom the union has never bargained in their history.

Mind you, the union was even in agreement to the above although we certainly felt that these people were not professional employees, but did it because we were being forced to do it under the provisions of the Taft-Hartley Act.

In order not to disrupt the entire bargaining unit, the union was forced under the Taft-Hartley Act to set aside certain people (the company-packed unit) that the company claimed were professional employees. This resulted in a hearing before the regional office of the National Labor Relations Board in St. Louis, Mo., from May 25 through June 18, 1948, to determine the appropriate unit. This is known as NLRB Case No. 14-RC-269. This hearing only resulted in the apparent wasting of the taxpayers' money, since there had never arisen the question of the propriety of a so-called professional unit, and even to this day the National



Labor Relations Board in Washington, D. C., has not rendered a decision as to the appropriate unit.

In order to appreciate more clearly the attempt on the part of the company to just automatically eliminate certain classifications as professional classifications, we refer you to NLRB Case No. 14-RC-269. A brief example of such is the company representative who testified to the title of assistant gas property engineer. He testified that he knew all about this classification, as well as gas-plant operations, but he did not know that the gas plant that he was supposed to be talking about, of which he did not know the location, had been retired and that the individual that he was vouching for in the matter of so-called professional duties was not performing the duties but actually on loan to another utility company. He did not know what type of gas the company distributed or that the company purchased gas from another utility company.

Another brief example is the company claim that students just out of college are professional under the meaning of the act, because they were performing related work under supervision of a professional person to qualify them to become a professional employee as defined in paragraph A, section 12, of the act. In the general-accounting department of the company, 11 supervisors have no certificates or degrees in accounting; 2 have certificates only; 1 has a degree but is a supervisor of IBM machines.

Student accountants are supposed to be training under professional people as claimed by the company. Of the 10 individuals (these include department heads and supervisors) who are to work in connection with the administering of the training program only one has a degree in accounting.

Of 75 managerial, supervisory, and confidential employees who are noncontract, 45 possess no certificate or degree in accounting; 14 have certificates from correspondence or night school; 14 have degrees; 2 have diplomas, and yet students training under them are supposed to be professionals under the meaning of the act.

The company stipulated with the union that the title of junior accountant and assistant accountant were nonprofessional, only to do an about-face and say that an employee who has a college degree and possessing the classifications of junior accountant or assistant accountant is professional.

A question which should be answered is why the union was required (other than through force) to go through a lengthy hearing to determine professional employees when there was no formal claim or complaint filed with the National Labor Relations Board by any employees or by the company. Not a single engineer in question appeared at the hearing to testify that they were professional under the meaning of the act. The regional office took the position that they could not certify a unit that included both professional employees and employees who are not professional but yet there are other utilities that are being bargained for as of today that include accounting and engineering classifications.

It is apparent that if the company is successful in the splitting of an already proven unit of office, clerical, sales, and technical employees, it will be just a matter of time when the company will contend for another group and this process continued until the local is abolished.

I have just briefly outlined conditions prevailing between the Union Electric Co. and the union under the Taft-Hartley Act and will be glad to answer any questions for enlightenment of the Senate Labor Committee.

Sincerely,

MATTHEW G. BUNYAN, *Business Manager.*

The CHAIRMAN. What is the pleasure of the gentlemen from this side? You have 10 minutes more. Do you want to call Mr. Moody?

Senator DONNELL. I think, Mr. Chairman, it might be well to call him. We have only 8 minutes left; is that right? We can just barely get started. Let us have Mr. Moody come forward just for a few minutes.

The CHAIRMAN. Mr. Moody.

Mr. Moody. We have gone so far as to suggest that you probably will be able to make your 10-minute statement in 8 minutes. If you do, you will make a record for this hearing.

**STATEMENT OF JOSEPH E. MOODY, PRESIDENT, SOUTHERN COAL PRODUCERS ASSOCIATION; ACCOMPANIED BY JOHN C. GALL**

Mr. MOODY. I would hate to attempt it, Mr. Chairman. I hoped that I would have a little more leeway than that. I even thought maybe both sides would grant me 1 or 2 minutes of their time over the time allowed.

The CHAIRMAN. Mr. Moody, for the record, will you state your name, what you represent, and your address.

Mr. MOODY. My name is Joseph E. Moody. I am president of the Southern Coal Producers Association. Our Washington office is located at 735 Southern Building in Washington, D. C.

Senator DONNELL. I wonder if Mr. Moody understands, in addition to the 10 minutes for his opening statement, on our schedule he is scheduled for 20 minutes of interrogation by this side plus whatever you gentlemen may desire, so there will be a little more time than that.

The CHAIRMAN. That is true; and then your whole statement will appear in the record, Mr. Moody, as you prepared it.

(The prepared statement submitted by Mr. Moody is as follows:)

**STATEMENT OF JOSEPH E. MOODY, PRESIDENT, SOUTHERN COAL PRODUCERS' ASSOCIATION**

My name is Joseph E. Moody, and I am president of the Southern Coal Producers' Association, a position I have occupied since November 1947.

The association, created in 1941, is incorporated under the laws of West Virginia, and is composed of district associations organized on a regional basis and of individual coal companies which belong directly to the Southern Coal Producers' Association.

One of the principal functions and purposes of the association is to represent the bituminous coal operators affiliated with it, either directly or by means of a regional association, for the purposes of collective bargaining. Such operators, engaged in the production of coal in Kentucky, West Virginia, Virginia, and Tennessee, produced approximately 139,975,000 tons of coal in 1948, an amount equaling about 32½ percent of the tonnage represented in the last contract negotiations. That conference resulted in a contract with the United Mine Workers of America for the greatest increase in wages ever received at any one time by the union and 100-percent increase in the contribution to the welfare fund. The successful conclusion of the conference was made possible only through certain safeguards in the Taft-Hartley law.

The coal industry faces the prospect of new negotiations soon with the United Mine Workers of America and its president, because the current agreement will expire next June 30. We feel that unless the safeguards in the Taft-Hartley law which enabled us to reach a contract in 1948 are continued, the country may again face a crisis in coal.

It is gratifying to have this opportunity to present information to the committee concerning actual experience under the Taft-Hartley Act.

I am not a lawyer, and I am not qualified to discuss legal technicalities, but, I have spent the last 20 years in industrial relations work in the front lines, and 20 years goes back before—before almost all of the present legislation concerning that most, most important field of activity in our great American industrial organization. Our success or failure in this effort to write a fair, equitable Labor-Management Relations Act can mean a prosperous economy for the country or confusion, hardship and strife that may eventually wreck our private enterprise system, which is responsible for the present standing of our Nation as a leader among nations and the chief support of some of them.

I will now present to the committee, not generalities, but a specific case, the conditions creating it and its solution, and possible future as it was affected by action under the Taft-Hartley Act. This case bears directly on section 8 (b) and subsections 1, B and 3 of the act, which reads "(b) it shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce \* \* \*

(B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances \* \* \* 3, to refuse to bargain collectively with an employer, provided it is the representative of his employees, \* \* \* and section 10 (j) the Board shall have power upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice; to petition any district court of the United States (including the District Court of the United States for the District of Columbia), for such temporary relief or restraining order as it deems just and proper."

The basic issues involved in the case stemmed from an attempt by the union to compel employers affiliated with the Southern Coal Producers' Association to cease dealing through the association, an effort which continued over a period of time and culminated in a threatened shut-down of the bituminous coal industry in the spring of 1948.

It must be noted that for some years following the creation of the Southern Coal Producers' Association in 1941, the United Mine Workers of America recognized the association as bargaining representative for its members and affiliates and contracted with it in that capacity. Thus, the association participated, with representatives of other groups of the bituminous coal industry, in negotiating the national bituminous coal wage agreement of 1945.

The association also was party to the bargaining conferences held in 1946 which attempted to write a contract to succeed the 1945 agreement. Those negotiations deadlocked and in May 1946, to avert a work stoppage, the United States took possession of the bituminous coal mines pursuant to the War Labor Disputes Act.

In May 1947, when termination of the Government seizure was approaching, Southern Coal Producers' Association sought a conference with the union for the purpose of negotiating a collective-bargaining contract for its members. The union recognized the association in that capacity and agreed to meet for that purpose. A few meetings were held and the conference was ended without a contract when the representatives of the United Mine Workers of America failed to appear for a scheduled meeting.

From that time until the middle of 1948, when the union was compelled to deal with the association by means of proceedings under the Taft-Hartley Act, the United Mine Workers of America refused to allow the association to act for its members, despite the repeated efforts of the members to secure representation through the association.

The first major union effort to compel them to drop the association as their collective-bargaining representative occurred in connection with the national bituminous coal wage agreement of 1947.

The terms and conditions of that contract were reached by means of negotiations between the United Mine Workers of America and representatives of a portion of the bituminous coal industry. In July 1947 it was adopted and executed by the remainder of the industry.

At that time Southern Coal Producers' Association was authorized by its affiliates and members to execute the contract on their behalf. In addition, the membership directed the association to attempt to secure from the union a modification of the union-shop provision contained in the contract so far as it would affect mines located in Virginia and Tennessee. This latter action was taken because the laws of those States outlaw union-shop contracts.

A conference was secured with the president of the United Mine Workers of America, at which he refused to deal with the Southern Coal Producers' Association. He insisted that its members and other operators affiliated with it would have to sign the contract individually. He refused to negotiate regarding any change in the contract to make it conform to pertinent State laws and insisted that the operators would have to sign the contract without any change whatsoever. It was made quite clear that the members of the Southern Coal Producers' Association were faced with the alternative of signing the contract individually or having their mines shut down by a work stoppage.

To avoid the threatened interruption of bituminous coal production in the large southern segment of the industry, it was determined at a meeting of the association to comply with the union's ultimatum, and the association members were authorized to sign the 1947 contract individually.

On August 22, 1947, the Taft-Hartley Act became effective, as amended. The act provides, as I outlined in the beginning of this presentation, in section 8 (b) (1) (B) that it shall be an unfair labor practice for any union to coerce or restrain employers in the selection of their representative for the purpose



of collective bargaining, and in section 8 (b) (3) it is provided that it shall be an unfair labor practice for a qualified union to refuse to bargain with employers' representatives.

In addition, section 8 (d) of the amended statute defines collective bargaining to include the obligation to meet and confer in good faith regarding any questions arising under an existing collective bargaining contract.

After the Taft-Hartley Act became fully operative the members of the Southern Coal Producers' Association reaffirmed the association as their collective-bargaining representative and notified the United Mine Workers of America that the association would continue to act for them in that capacity.

On March 15, 1948, as a result of a controversy between the trustees of the welfare and retirement fund, established under the national bituminous wage agreement of 1947, a strike took place throughout the industry. As president of the Southern Coal Producers' Association and chief negotiator for it, I joined with the representatives of other groups of operators, and we addressed a letter to the president of the United Mine Workers in which we requested a return to work and offered thereupon to negotiate any dispute which might exist regarding the terms and provisions of the contract. No such meeting could be effectuated.

The Director of the Federal Mediation and Conciliation Service attempted to compose the controversy by means of a conference in which I participated as representative of the Southern Coal Producers' Association. Such meetings were equally fruitless.

On March 23, 1948, the President of the United States invoked the national-emergency provisions of the Taft-Hartley Act and established a board of inquiry. That board reported on the last day of that month and on April 3, 1948—the strike still existing—the Attorney General of the United States secured from the Federal district court a temporary restraining order directing a termination of the strike and commanding the union and the operators to proceed immediately to bargain collectively with regard to the dispute existing between them.

Although it is a digression from the main theme of this statement it may be noted that the United Mine Workers of America and its president subsequently were found in contempt of the court's injunction because of failure to terminate the strike—which was ended about April 12, 1948, when a third and neutral trustee was appointed for the welfare and retirement fund and the dispute resolved to the satisfaction of the union.

To resume the main theme, on April 7, 8, and 9, 1948, meetings between representatives of the various groups of bituminous coal operators, party to the 1947 contract, and the union were held in Washington, D. C., for the purpose of the negotiations directed by the court. Being duly authorized, I attended such meetings on behalf of the Southern Coal Producers' Association, to represent its members and affiliates.

The representatives of the United Mine Workers of America adamantly refused to permit the association to act for its members as their collective-bargaining representative or to participate in any way in the conference. Accordingly, on April 9, we filed a charge with the National Labor Relations Board charging the union and its president with unlawfully refusing to bargain and with unlawfully attempting to coerce and restrain the members of the association in the selection of their bargaining representative.

On April 30, 1948, while that charge was pending before the National Labor Relations Board, the president of the United Mine Workers of America by letter, notified the signatories to the national bituminous coal wage agreement of 1947 that a conference would convene on May 18, 1948, to negotiate a contract to succeed that one. On the same day, as president of the Southern Coal Producers' Association, I transmitted two letters to the president of the union requesting a conference to negotiate a new collective-bargaining contract between the union and the operators represented by the association. Those letters were not answered.

At this point I again want to digress and mention that the letters of April 30, 1948, to which I have referred, were filed in compliance with section 8 (d) of the Labor-Management Relations Act, 1947, which requires that when the parties to a collective-bargaining agreement want to terminate or change it, they shall give the other party 60 days' notice so that a period of negotiation without interruption of production may ensue. I mention this point here because of the important role that the 60-day no-strike period played in avoiding a work stoppage in the industry.

On May 18, 1948, the conference called by the union notice was convened and called to order. In accordance with past procedure at such national bituminous coal conferences, a committee on rules and procedure and a committee on credentials were selected. Representatives of the union on the credential committee refused to accept my credentials authorizing me as president of the Southern Coal Producers' Association to bargain for its members and some nonmember companies which had authorized it, although at no time did the union challenge the authority of such credentials. The union representative maintained a flat position that the union would not deal with the association.

Accordingly, the credentials committee could not agree upon a report designating accredited representatives to participate in the conference. The union members of the committee submitted a partial report moving that all representatives except the Southern Coal Producers' Association be accredited and that the conference proceed on that basis. An operator representative on the committee then moved to amend that motion to accredit and accept the Southern Coal Producers' Association as a participant in the conference.

The day following the submission of those motions, they were put to a vote and both were defeated. Thereupon, the president of the union declared that the conference could not proceed and was at an end, and the representatives of the union left.

That afternoon, May 19, 1948, we filed a supplemental charge with the National Labor Relations Board reciting the events which had taken place between April 9, 1948, and that date, and again charging the union and its president with refusal to bargain and an attempt to coerce the members of the Southern Coal Producers' Association in the selection of their bargaining representative.

On May 24, 1948, the Board issued a complaint against the union and its president, alleging such violations of the statute, and the Board's regional director, acting pursuant to section 10 (j) of the law, petitioned the United States District Court, District of Columbia, for a preliminary injunction against the violations pending final disposition of the Board's case.

On June 4, 1948, after hearing had been held on a rule to show cause issued in response to that petition, the court rendered its decision. Mr. Justice Goldsborough found that there was reasonable cause to believe that the violations were occurring and that—

"There is imminent danger and great likelihood, from the past conduct of respondents and from the history of collective bargaining negotiations in the bituminous coal industry that as a result of respondents' refusal to bargain collectively as aforesaid a new agreement for the bituminous coal industry or the substantial part thereof represented by association will not be negotiated by June 30, 1948, when the present agreement expires. It is reasonable to anticipate from custom and practice of the employees in the coal industry in the past that the coal miners represented by respondents will engage in a stoppage of work and that operations in the mines in which they are employed will therefore cease, on or after June 30, 1948, if no new agreement is negotiated between their employers and respondents, to succeed the agreement expiring June 30, 1948. Such cessation of production of coal not only will result in substantial and irreparable damage to the coal producers affected but may necessitate the closing or curtailment of transportation, public utilities, and other services essential to the public health and welfare, and seriously impede the free flow of commerce among the several States and with foreign countries, thereby causing immediate, substantial, and irreparable injury to the Nation."

Accordingly, the court ordered the union and its president to bargain collectively with the Southern Coal Producers' Association as the representative of the employers who had authorized it to act for them and to permit the Southern Coal Producers' Association in that capacity to participate at any meeting or conference with other employers or their representatives for the purpose of making a collective-bargaining agreement with the union.

Immediately after the court issued the order the union offered to meet with the representatives of the bituminous coal operators, including the Southern Coal Producers' Association. Negotiations then proceeded and on June 25, 1948, a contract was executed with the union, to which Southern Coal Producers' Association is a party on behalf of its members.

You will note that as a result of the proceedings a contract was consummated within the 60-day period following April 30, 1948, and no work stoppage occurred because of the dispute between the Southern Coal Producers' Association and the union regarding the right of the former to speak for its membership.

To conclude the history, as a result of meetings between attorneys for the Association and the union, the case pending before the National Labor Relations Board was settled without any hearing and Board decision. The Board dismissed the complaint because the attorney for the union and its president, acting as their agent, addressed a letter to the Board stating that the union and its president will continue to deal with Southern Coal Producers' Association as the authorized bargaining agent for its members and affiliated operators with respect to matters arising under the contract signed on June 25, 1948, and including matters relating to any extension, renewal, or modification thereof and the negotiation of any contract to succeed that one.

As I stated at the beginning of the presentation, I am not an attorney, and I cannot discuss the legal niceties of the situation. However, it seems to me that there are several things which are indisputably clear from the history of this case.

First. Only the statutory requirements—compelling the United Mine Workers of America to bargain collectively and prohibiting the union from coercing employers in the selection of the bargaining representative enabled the membership of Southern Coal Producers' Association to choose their representative without any outside influence.

Second. If it had not been for the availability of injunction under section 10 (j) of the Labor-Management Relations Act, 1947, there would have been no mechanism by which the union and its president could have been compelled, short of a proceeding under the national emergency sections of the above act, to accord Southern Coal Producers' Association bargaining status until final disposition of the case before the Board. It is a matter of record by Mr. Herzog before this committee that such cases rarely are disposed of within 1 year and thus the administrative proceeding alone would have been completely ineffective to avert a work stoppage. I need not remind the members of this committee that the United Mine Workers of America has an almost inflexible policy of "no contract—no work."

Third. It should be noted that the injunction issued by the Federal district court in no way directed the union or its president to accept or refrain from demanding any particular wages, hours, or other terms or conditions of employment. The injunction merely compelled the union and its president, to sit across the bargaining table from the representative whom the members of the Southern Coal Producers' Association wanted to speak for them and to deal in good faith with that representative.

It seems fundamental to us that if collective bargaining is to work—and our national labor policy is premised on collective bargaining—the parties sitting on each side of the bargaining table must be free to choose their representative and must be under an obligation to deal in good faith with the representative selected by the fellow on the other side of the table. When either party to a bargaining relationship is free not to bargain or is free to bargain only with a person he designates, the system of collective bargaining cannot successfully operate.

It is also noteworthy from the case I have related that in the span of approximately 1 year the provisions of the Taft-Hartley Act were effectively utilized to avoid one and stop another work stoppage in one of the basic industries of the country.

The bill which has been submitted to this committee by the Secretary of Labor would eliminate from the Labor-Management Relations Act the union obligation to bargain collectively, would strike out the prohibition against a union restraining or coercing employers in the selection of their representative and would delete section 10 (j) permitting the National Labor Relations Board prompt recourse to the courts in order to avoid disastrous consequence which might flow from unfair labor practices. In short the bill which has been presented to the committee would eliminate all of the provisions which enabled the membership of Southern Coal Producers' Association to negotiate the contract now in effect between them and the union.

The great union organizations of this country have now reached maturity and to quote Mr. William M. Leiserson in the February 6 edition of the New York Times:

"The Wagner Act became law when labor was generally the weaker party, and its success in increasing labor's bargaining power has been spectacular. Sixteen million workers are now in organizations capable of bargaining on an equality with employers, and collective agreements govern labor relations in all the major industries of the country. This makes many employers feel abused,



and in some instances their feeling is justified; some of them are now the weaker party.

"The remedy, however, is not to weaken unionism but rather to strengthen the bargaining power of employers in the same way that the Wagner Act did for employees; namely, by subjecting unions to the same bargaining responsibilities that the law imposes on managements."

It is our firm belief that the Taft-Hartley Act has worked exceptionally well, much better than even its friends had hoped and far better than its enemies had predicted. It has hurt no one; even the labor leaders who cry the loudest have a hard time pointing to any damage to their operations during its very short span of life. We do not take the position that the Taft-Hartley Act is perfect, and we agree that as experience demonstrates the need for changes; they should be adopted, whether this means omission of things now in the law or strengthening of the law by added provisions.

Although our testimony goes largely to the facts involved in the case which I have outlined to you and the need for retaining the sections of the Taft-Hartley Act involved in that case, we would not wish to give the impression that we think other provisions of the act are not of great importance.

We believe experience to date indicates that the requirements for the holding of elections in union-shop cases and on the last offer of employers in national emergency cases serves no useful purpose and should be eliminated. We also feel that the conciliation and mediation functions might well be continued at all stages of a labor dispute, and our experience indicates strongly that employers will have more confidence in the Service, if the provision for its independent status is continued.

We are particularly interested in the preservation of the provisions of the present law with respect to supervisory personnel. We also feel from our own experience that the separation of functions between the general counsel and the Board is an important feature of the act and should be retained. We further feel that, as already indicated, the provisions under which the general counsel may, in proper cases, secure injunctive relief, are vital in the effective administration of any law. If these provisions were eliminated it would do employers situated as we were, little good to be told that some time, perhaps many, many months away, the Board might agree with our contentions as to the law. This would be merely closing the barn after the horse was stolen. In our judgment, rights are no good unless the law also provides adequate remedies.

It may not be Southern Coal Producers' Association the next time but the power will be there to use, whoever it may be. In the past, the usual course of events were: a demand, end of a contract, a strike, and then Government seizure. During the period 1939-1947 there were 13 major industry-wide strikes in the coal industry, varying in length from a few days to 6 weeks. During most of these times of strife, the supply of coal available for use was so limited that the economy of the country was seriously affected in a very short time. Since the Taft-Hartley Act has been in effect, there has been but one strike and today the country has the best supply of coal on hand in over 10 years, not enough for 100 days, as has been reported, but certainly enough for 40 or 50 days in the basic industries of power, light, and steel, as well as for domestic use.

During the period 1943-47 the Government had to seize the mines four times and some were seized during the strike concerning the controversy over the organization of supervisors for the fifth time. In that period of years, the Government had to operate the mines 865 days, or over half of the time.

It would seem reasonable to conclude that far from having the Taft-Hartley Act precipitate this industry into confusion, it has established, for the first time in many years, an orderly procedure to encourage and develop collective bargaining.

If I can give the committee any further information with respect to any provisions of the act with which we have had experience, I shall be glad to do so.

Mr. MOODY. Gentlemen, with your indulgence, I have with me Mr. John C. Gall, who is counsel for the association, and I imagine some of you know him. The reason for that is I have been on this job only since November 1947 and so some of the background and past history may be a little guesswork on my part, and Mr. Gall has been associated as counsel with the association for several years and would know more intimately than I on that, and plus the fact that since some of

you gentlemen are lawyers, you will appreciate that a nonlawyer, as I am, in the presence of your very great knowledge—and it is impressive to one who is not—may have very well to pass some of the technical questions on to my good friend.

In my statement, I have outlined the premise of our presence here and the reason for our being here, but I will have, in trying to cover this in the 7 minutes that I have left, to necessarily jump around in that statement.

The Southern Coal Producers Association is incorporated under the laws of West Virginia and is composed of district associations organized on a regional basis and of individual coal companies which belong directly to the Southern Coal Producers Association.

One of its principal functions and purposes is to represent the bituminous coal operators affiliated with it either directly or by means of a regional association for purposes of collective bargaining.

Such operators engaged in the production of coal in Kentucky, West Virginia, Virginia, and Tennessee produced approximately 139,975,000 tons of coal in 1948. This amount equalled about 32½ percent of the tonnage that was represented in the last contract negotiations.

That conference, as you remember, resulted in a contract with the United Mine Workers of America for the greatest increase in wages they ever received at one time, plus 100 percent increase in the contributions to the welfare fund.

I want to say here that the successful conclusion of that conference was made possible through certain safeguards in the Taft-Hartley Act. The coal industry at the present time faces the prospect of new negotiations soon with the United Mine Workers and its president. The current agreement will expire next June 30. We feel that unless the safeguards in the Taft-Hartley law, which enabled us to reach a contract in 1948, are continued, this country may again face a crisis in coal.

As I stated before I sat down, I am not a lawyer and I am not qualified to discuss legal technicalities, but I spent the last 20 years of my life in industrial relations, working in the front lines. The case that I want to present is not one of generalities but one of a specific experience that the association and myself as its president and chief negotiator experienced last year.

It bears directly on section 8 (b) and subsections 1 (b) and 3 of the act, and I will not read them. You, I think, will know that they are the unfair labor practice to restrain and coerce an employer in the selection of his representatives and refuse to bargain collectively with an employer, provided he is a representative of the employer, and also section 10 (j) which gives the Board the authority to apply for a temporary injunction in the case of unfair labor practices.

The Southern Coal Producers Association formed in 1941 negotiated contracts and dealt for the purpose of collective bargaining with the United Mine Workers of America during the years 1941–47, to one degree or another, and actually signed contracts for its member associations and the member companies which it represented as well as other companies that affiliated with it during the negotiations, such as the Alabama operators.

In May 1947, when the termination of the Government's seizure was approaching, Southern Producers Association sought a conference

with the union for the purpose of negotiating a collective-bargaining contract for its members.

I might just say here, the honorable Senator from Florida mentioned that there were not many strikes through 1943-47. It is interesting to note that during that 4-year period the Government had seized the mines and had control of them 865 days during that period of time when it was rather hard to have any strikes under those circumstances. A few meetings were held, but the conference finally ended without a contract when the representatives of the United Mine Workers failed to appear for a scheduled hearing.

The contract in 1947 was finally signed with certain sections of the industry, and the Southern Coal Producers Association tried to obtain certain changes in that basic contract in to cover the State laws of Tennessee and Virginia.

However, they were rebuffed completely by the United Mine Workers, and a refusal was made to make any changes in it to take care of those State laws which have to do with the union-shop clause, and further the union refused to sign the contract with the association but was willing to allow its component parts; that is, its member associations and the companies affiliated with it, to sign, and they had no choice but to sign it or face a stoppage of work.

As you know, and as has been mentioned here this afternoon, the United Mine Workers of America does have not an inflexible but almost inflexible rule of no contract, no work.

We come up to the spring of 1948, and some of the chronology that has been talked about here with my good friend Mr. Haley, and we find that in February, February 2, a telegram was sent out by Mr. Lewis in which he said that the contract had not been honored and that it would be necessary to take such independent action as they saw fit.

Then, March 15, as the result of the controversy between the trustees, the welfare and retirement fund, a strike took place throughout the industry.

As president of the Southern Coal Producers Association and their chief negotiator, I participated in all meetings, although I must say that after the union had been enjoined by the action of the President of the United States and the Attorney General and the order of the court, on April 3, we met up at the Shoreham for several days, April 7, 8, and 9, to be specific, and being duly authorized to attend such meetings and represent the Southern Coal Producers Association and its members and affiliates, I did so.

However, the representatives of the United Mine Workers of America adamantly refused to permit the association to act for its members or their collective-bargaining representative or to participate in any way in the conference. I might say for some time there were whole hours when no one spoke a word because they would not talk with me in the room, and at one point I was offered the opportunity of dropping out the third-story window.

THE CHAIRMAN. Wait a minute. Were you offered that opportunity without any word being spoken?

MR. MOODY. Well, they were not talking to me. They were talking across the table and suggested that that could be worked out.

SENATOR DONNELL. I did not hear you.



Mr. MOODY. I am sorry, Senator Donnell. I said that at one point in the conference there was a conversation across one end of the table in which it was suggested that I be given the opportunity of dropping out the third-story window, and certain people would help me in the action.

Senator DONNELL. Who made that statement?

Mr. MOODY. It was made by certain people.

Senator DONNELL. I would like to know.

Mr. MOODY. I cannot tell you who it was. It was made more or less facetiously that that would be one way of my leaving.

Senator DONNELL. Whose side of the table was it?

Mr. MOODY. I think it was the United Mine Workers. I do not believe my own associates would.

Senator DONNELL. Are you sure of that?

Mr. MOODY. I am making that as a statement.

Accordingly, on April 9 we filed a charge with the National Labor Relations Board, charging the union and its president in unlawfully refusing—I would like to break in there to say it was a facetious comment and made in a cross-talk at the time—to bargain and were unlawfully attempting to coerce and restrain the members of the association in the selection of its bargaining representative.

On April 30, while that charge was pending before the National Labor Relations Board, the president of the United Mine Workers of America by letter notified the signatories to the national bituminous coal wage agreement of 1947 that a conference would convene on May 18, 1948, to negotiate a contract to succeed that one.

On the same day, as president of the Southern Coal Producers Association, I transmitted two letters to the president of the union requesting a conference to negotiate a new collective-bargaining contract between the union and the operators represented by the association. These letters have not been answered.

At this point, again, I would like to digress and mention that in the letters of April 30 to which I referred—they were filed in compliance with section 8 (b) of the Management-Labor Relations Act of 1947 which requires the parties to a collective-bargaining agreement to terminate or change, to give 60 days' notice.

On May 18, the conference called by the union notice was convened and called to order in accordance with past procedure of such conferences and a committee on rules and procedures and a committee on credentials were selected.

The representatives of the union and the committee on credentials refused to accept my credentials authorizing me as president of the Southern Coal Producers Association to bargain for its members, and some nonmember companies which had authorized, although at no time did the union challenge the authority of such credentials. The union representatives maintained a flat position that the union just would not deal with the association.

Accordingly, the credentials committee could not agree upon a report designating a credit representative. A motion was made by them as a minority report to accredit everybody, but Southern Coal Producers Association, and then that motion was amended by one of the employer representatives to accredit Southern Coal Producers Association.

The next day both motions were voted down because the union voted "yes" on one end and "no" on the other, and vice versa, and the result was that there was no conference.

The present of the union declared that the conference could not proceed, and was at an end, and the representatives of the union left the conference. That afternoon, May 19, we filed a supplemental charge with the National Labor Relations Board again charging the union and its president with refusal to bargain and attempting to coerce the members of the Southern Coal Producers Association in the selection of their bargaining representative.

On May 24 the National Labor Relations Board issued a complaint against the union and its president alleging such violations of the statute and the Board's regional director, acting pursuant to section 10 (j) of the law, petitioned the United States District Court of the District of Columbia for a preliminary injunction against the violations pending final disposition of the Board's case.

On June 4 after a hearing had been held on a rule to show cause issued in response to that petition, the court rendered its decision. I have here the quotation from Mr. Goldsborough's decision. I will not bother to read that, although it is very interesting and has considerable findings in it that would be of interest.

Senator DONNEL. Am I correct in understanding that the Chair has ruled the entire statement will be set forth in the record.

The CHAIRMAN. Yes, it is in the record.

Mr. MOODY. According the court ordered the union and its president to bargain collectively with Southern Coal Producers Association as the representative of the employers who had authorized it to act for them and to permit Southern Coal Producers Association in that capacity to participate in any meeting or conference with other employers or their representatives for the purpose of making a collective-bargaining agreement with the union.

Immediately after the court issued the order—as a matter of fact just an hour, forty minutes, I think it was exactly after the order was issued—the union offered to meet with the representatives of the bituminous coal operators, including Southern Coal Producers Association. Negotiations then proceeded and on June 25 the contract was executed with the union to which Southern Coal Producers Association as a party on behalf of its members joined.

I would like to have you note that as a result of proceedings a contract was consummated within the 60-day period following April 30. There was no work stoppage which occurred because of the dispute between Southern Coal Producers Association and the union regarding the right of the former to speak for its members.

Just to conclude the story, as a result of meetings between the counsel for the association and the counsel for the union, and without any hearing or final board decision, the Board dismissed the complaint after the attorney for the union and its president, acting as their agent, addressed a letter to the Board stating that the union and its president will continue to deal with Southern Coal Producers Association as the authorized bargaining agent for its members and affiliated operators with respect to matters arising under the contract signed on June 25, 1948, and including matters relating to any extension, renewal, or modification thereof, and the negotiations of any contract to succeed that one.

As I said three times now, I am not an attorney. I am trying to make that clear. However, it does seem to me there are several things that are clear in the history of the case.

First, only the statutory requirements compelling the United Mine Workers to bargain collectively and prohibiting the union from coercing employers in the selection of the bargaining representative enabled the membership of the Southern Coal Producers Association to choose their representative without any outside influence.

Senator DONNELL. Those statutory requirements are in the Taft-Hartley Act?

Mr. MOODY. They are, sir.

Secondly, if it had not been for the availability of the injunction under section 10 (j) of the Labor-Management Relations Act, there would have been no mechanism by which the union and its president could have been compelled, short of a proceeding under the national emergencies sections of the above act, to accord Southern Coal Producers Association bargaining status until final disposition of the case before the Board.

I think it is a matter of record before this committee by Mr. Herzog on questioning that such cases rarely have been disposed of within 1 year, which would have been completely ineffective. The United Mine Workers of America have an almost inflexible policy of "no contract, no work."

Third, I think it should be noted that the injunction issued by the Federal district court in no way directed the union or its president to accept or refrain from demanding any particular wages, hours, or other terms or conditions of employment.

The injunction merely compelled the union and its president to sit across the bargaining table from the representative whom the members of the Southern Coal Association wanted to speak for them, and to deal in good faith with that representative.

It seems fundamental to us that if collective bargaining is to work—and our whole national labor policy is based on that—the parties sitting on each side of the bargaining table must be free to choose their representatives and must be under an obligation to deal in good faith with the representatives selected by the fellow on the other side of the table.

When neither party in a bargaining relationship is free not to bargain, the system of collective bargaining cannot successfully operate.

Senator PEPPER. Mr. Moody, could you just in a sentence or two, since the time is short, give what the miners' excuse was for not wanting to bargain with you, with your association?

Mr. MOODY. Senator Pepper, I have asked that directly of Mr. Lewis on more than one occasion, and I do not know now. I have certain assumptions, but I honestly do not know the reason for it.

In Mr. Justice Goldsborough's findings he makes the comment that it might be because he had found us rather tough to bargain with, but the fact that we were tough bargainers did not mean we were unsuitable for bargaining purposes. Whether that is an answer or not, I do not know, but I have never been given a direct answer.

It is also noteworthy, from the case that I have related, to note that in a span of approximately 1 year the provisions of the Taft-Hartley



Act were effectively utilized to avoid one and to stop another stoppage in one of the basic industries of the country.

I will skip along here. I think it is important that in our consideration of a labor bill, as we are doing here, we take into consideration the comment of Mr. Leiserson in the New York Times of February 6 in which he said:

The Wagner Act became law when labor was generally the weaker party, and its success in increasing the labor bargaining power has been spectacular. Sixteen million workers are now in organizations capable of bargaining on an equality with employers and collective bargaining agreements govern labor relations in all the major industries of the country.

This makes many employers feel abused and in some instances their feeling is justified. Some of them are now the weaker party. The remedy, however, is not to weaken unionism but rather to strengthen the bargaining power of the employers in the same way that the Wagner Act did for employees: namely, by subjecting unions to the same bargaining responsibilities that the law imposes on management.

It is our firm belief that the Taft-Hartley Act has worked exceptionally well, much better than even its friends had hoped, and far better than its enemies had predicted.

It has hurt no one. Even the labor leaders who cry the loudest have a hard time pointing to damage to their operations during its short span of life. We do not take the position that the Taft-Hartley Act is perfect. We agree that as experience demonstrates the need for changes, they should be adopted whether this means omission of things now in the law or the strengthening of the law by added provisions.

Although our testimony goes largely to the facts involved in the case which I have outlined to you, and the need for retaining the sections of the Taft-Hartley Act involved in that case, we would not wish to give the impression that we think other provisions are not of importance.

The CHAIRMAN. Mr. Moody, I think that would be a good place to stop. I think it would be unwise now not to have any of your statement in starting the proceedings in the morning.

At this point I shall insert in the record a letter from Senator Wiley of Wisconsin, enclosing a statement from Mr. J. Newcomb Blackman.

(The letter referred to is as follows:)

HON. ELBERT THOMAS,  
*Chairman, Senate Labor and Public-Welfare Committee,*  
*United States Senate, Washington, D. C.*

(Attention, Mr. Earl Wixcey.)

DEAR ELBERT: I am enclosing herewith for your consideration and inclusion within the printed hearings on the Taft-Hartley law a statement by a Mr. Blackman representing the Investors League of America.

I had previously communicated with you regarding the possible appearance of Mr. Blackman for oral testimony but apparently that did not work out because of the many similar requests that you, of course, received.

May I, therefore, ask that this statement be printed if it is at all possible, I believe Mr. Jackman of New York has been in contact with you on this subject.

Finally, I am also enclosing herewith bound copies of Mr. Blackman's statement. I would appreciate it if one copy of each of these bound statements could be placed at the desk of each of the committee members and if you could find an opportunity amongst your crowded day to glance through it personally.

With kind personal regards, I am

Sincerely yours,

(Signed) ALEX  
Alexander Wiley.

(The statement of Mr. Blackman is as follows:)

STATEMENT OF J. NEWCOMB BLACKMAN, NEW YORK, N. Y.

I am J. Newcomb Blackman, a resident of East Orange, N. J., and I also have an office at 233 Broadway, New York City. Also, I am a member of the board of directors of the Investors League, an organization which has many thousands of members in every State of our Union. My statement, I hope, will receive your very careful consideration, not only for myself as a substantial stockholder and investor in many of our largest corporations, banks, and insurance companies, but because I believe it also reflects, in my presentation for the consideration of your committee, the views also of millions of other investors. During the hearings before your committee, I have listened to statements and testimony which have impressed me that the important thing being considered by you is how the Taft-Hartley Act has affected labor unions: In other words, the employees of the many large companies which we stockholders really own. It seems to be, as in most cases, a debate between so-called capital and labor with management obscured in their role as the trustees of the invested funds of millions of stockholders. We stockholders have furnished billions of dollars in capital, without which there could be no free-enterprise system and the payment of salaries and wages of both management and labor. Therefore, for the purpose of these hearings, I feel justified in saying that I represent the forgotten investor.

After an uncontrolled wave of strikes, and disorders resulting therefrom, extending over a period of years since the enactment of the Wagner Act, relief was sought and finally obtained by the enactment of the Taft-Hartley Act which became effective August 22, 1947. This act did not become a law until after about 7 weeks of hearings. During that time, those for and against the bill were given an opportunity to be heard. After the enactment of the Taft-Hartley Act, we investors thought it would bring about a correction of certain inequalities and improve the situation for all concerned. In other words, we thought we should and would under this act have rules in business, as we do in football and other great American sports; that these rules would be fair to all and enable employees, management, and investors to work together as a team. Unfair and misleading propaganda, however, was spread by leaders of labor unions to the effect that this law was a "slave-labor law." No details which I can really recall were ever given to substantiate this claim. However, the constant repetition of the claim created a belief that this might be so. If there was any slave labor, it was in respect to the employee who was obliged to work under the conditions of the Wagner Act, without the many protections which he obtained under the Taft-Hartley Act. I am prepared to substantiate this statement because I have had much personal business experience.

In 1932, I retired after a successful business career extending over a period of 38 years. My start was that of an office boy at the age of 14. During this time, I carried on successfully many businesses, paid millions of dollars in wages to my employees, many thousands of dollars in taxes to our Government, and also shared profits with my employees. The net result was that I was able to accumulate certain savings, much of which were reinvested. During most of this time, my employees and I were encouraged by incentives and rewards. We tried to exercise our talents so as to give, at least, a fair day's work for a fair day's pay.

As a result of my own business experience before retirement and afterward, I have had occasion to observe the trend of labor unionism. At the outset, let me say, I am not opposed to organized labor, and I also fully approve of collective bargaining. However, I do not think that collective bargaining should be a privilege confined to union labor. Instead, there are many others who should enjoy this privilege, including stockholders. It is, therefore, with great alarm that I have found that instead of collective bargaining, our management in many cases have been confronted with demands which must be met or else. As a safeguard in such instances, we have had under the Taft-Hartley Act a provision which required unions to bargain in good faith in the same manner as employers. The proposed Thomas bill, however, requires only the employer to bargain in good faith. This would leave unions again free to engage in their practices of demanding concessions from employers without being willing to bargain about such demands.

Then we have the subject of union coercion. Under the Taft-Hartley Act, unions or their agents were prohibited from engaging in restraint and coercion against employers. This included mass picketing, use of physical force, threats

of bodily harm, etc., to force the will of the union upon employees. The Thomas bill would remove this protection and instead permit a return to conditions as they existed under the old Wagner Act. This would enable unions to resume such practices without fear of charges of unfair-labor practices. Perhaps you gentlemen may think that I have not had personal experience with many instances where mass picketing and lawlessness were not only indulged in but condoned by noninterference or protection on the part of law-enforcement officers. You will note that these instances occurred more frequently before the enactment of the Taft-Hartley Act and while the Wagner Act was in effect. To substantiate the fact of some personal experiences and the danger of what we may return to, I quote below a letter dated January 10, 1946, which I addressed to the mayor and members of the city council of East Orange, N. J.:

NEW YORK 7, N. Y., *January 10, 1946.*

HON. CHARLES H. MARTENS,

*Mayor, and Members of the city council of East Orange, N. J.*

GENTLEMEN: Yesterday afternoon, I addressed a telegram from East Orange, N. J., to the Governor of the State of New Jersey, as follows:

"JANUARY 9, 1946.

"HON. WALTER E. EDGE,

*Governor, State of New Jersey,  
State House, Trenton, N. J.:*

"Congratulations upon your message to the new State legislature concerning utility strikes. I am addressing a letter to the mayor and city council of East Orange regarding same and planning to address the council on the subject at their next meeting Monday night, January 14, 1946.

"J. NEWCOMB BLACKMAN,  
"East Orange, N. J."

This could not have been sent from New York because of the Western Union strike effective there.

The recently threatened strike of telephone equipment workers has been announced to become effective at 6:30 a. m. tomorrow (Friday). It is further stated that the union will throw picket lines around telephone exchanges in New Jersey. Furthermore, that while there will not be a strike now by the telephone exchange operators, it is not likely that they will cross picket lines. The strike is expected eventually to tie up all telephone communications through exchanges picketed.

The telephone strike will be a sympathetic strike resulting from the Western Electric union's demands not being met in full.

The disgraceful lack of police protection, in the case of the Yale & Towne strike, is too well a matter of record to discuss in detail. It became necessary eventually for Governor Baldwin to use State troops to preserve law and order because of the refusal of local peace officers to do so. The later city-wide strike was merely a protest against law and order being maintained.

At Kearney, N. J., last week, supervisory and other employees, who were not members of the striking union, were promised police protection. This protection was not given and police stood by with indifference while employees of the company tried to carry out their legal right to enter the plant and go to work. The resulting violence and injury to supervisors is a matter of record, with newspaper photographic illustrations.

I have checked the above facts with injured employees as well as with the company, and have just been informed that a lack of police protection has continued to this writing.

If this sort of thing is permitted to happen in East Orange, it will be a disgrace to the city and a stain upon the good record of its governing officials.

Therefore, to emphasize the importance of preparation which might be referred to as an "alert" to avoid violence and lack of police protection in East Orange, I discussed the situation confronting East Orange by the then threatened strike to ascertain what protection could be depended upon. I was assured by the president of the police commission that the police department would maintain law and order. I suggested that he consult the city counsel, Judge Walter Ellis.

Later I talked with Judge Ellis, and he assured me that he would be glad to give the police commissioner, upon request, his opinion as to what constituted maintenance of law and order.

Finally, I talked with the new chairman of the city council, Mr. Nicholas Joya, who is also a lawyer.



The impression I received from these officials was that there would be no mass picketing or interference permitted which would prevent employees or others, who desired to do so, from entering or leaving the Telephone Building on Baldwin Street, East Orange.

Think of the refusal of the Stamford police to insure safe passage of Mr. W. Gibson Carey, president of Yale & Towne, through the picket lines to his office. And again their advising him not to try to go through himself because "it might result in injury to him." Think again of the union's public statement that they would allow no one to go through the picket line without a union pass. These tactics have been continued in the Western Electric strike in Kearney, N. J. In that case, see Newark Evening News of January 5, 1946, photo with caption underneath, "Union officials meet with Navy contract-termination director to discuss allowing Navy personnel to enter plants," and note the word "allowing."

Governor Edge, I think, is the first among our State chief executives to come out boldly and fearlessly in his message to the New Jersey legislature.

He advocated measures to require compulsory arbitration or labor disputes that hamper distribution of living essentials.

He said that the Boston police strike in 1919 brought forth the principle that:

"There is no right to strike against the Government, national, State, or local. I solemnly declare to you that the time has come to accept the next principle. It is this: There is no right at any time to strike against the security, welfare, and the lives of the people—and heat, light, power, transportation, water, and food are the life essentials of the people."

Continuing, he said:

"I see no reason why a proper board of public-utility arbitration could not establish a fair wage scale and working conditions for a public utility as easily as a public utility commission today can establish a fair rate to consumers. Therefore, I counsel those who are concerned with the State of New Jersey that they have the power and the authority to provide this type of insurance against hardship and privation of its citizens."

In a very timely syndicated article, which appeared January 8, 1946, in the Newark Evening News, the New York Sun, and probably hundreds of other newspapers throughout the country, the well-known newspaper publisher and writer David Lawrence said in his article titled "Picket Line Technic Becomes Public Scandal":

"When State laws break down and local police allow unions to determine who shall or shall not enter a plant, where a strike has occurred, it is conceded that illegal picketing is in progress. \* \* \* Encouraged by the break-down of State and local authority in Connecticut, picketing efforts have taken the same steps in other areas so that now it is becoming common to observe unions issuing passes permitting selected personnel to go through picket lines.

"None of the laws of any of the several States relating to peaceful picketing condones coercion or violence even my employment. \* \* \* but, when labor-union leaders actually order their members or professional pickets to take up positions at the entrances to plants and forcibly prevent management from entering, it is only a question of time when resistance will be made and bloodshed will ensue. Will it require bloodshed to awaken the States and cities to their decision in relation to illegal picketing?"

I do not think I need to further impress upon the mayor and the city council the importance of seeing that this lawlessness is not permitted to occur, let alone continue, in the city of East Orange. If it does, and the local police cannot handle the situation, then I think Governor Edge's message indicates that we can get action from the State, if necessary.

However, I am confident that our mayor and those responsible for the protection of our citizens and property can be dependent upon, and I will continue with that conclusion until events prove otherwise.

I have been a citizen of East Orange for many years, am a stockholder of the American Telephone & Telegraph Co., and therefore a part owner of its subsidiaries, among which are the Western Electric Co. and the New Jersey Bell Telephone Co.

Copies of this letter are being given to the local press. I think many citizens of East Orange may want to attend the next meeting of the city council, and then express either their approval or disapproval of East Orange's action in handling mass picketing, if it occurs, in connection with the scheduled telephone strike.

Very truly yours,

J. NEWCOMB BLACKMAN.

One of the chief protections under the Taft-Hartley Act has been against the use of the secondary boycott. The only kind of secondary boycotts which are forbidden by the proposed Thomas bill are those directed toward the objective of forcing a violation of the National Labor Relations Act. Under the Taft-Hartley Act, such boycotts could be temporarily enjoined by a Federal district court. The Thomas bill, on the other hand, provides that boycotts may be stopped only after long-drawn-out proceedings before the Labor Board, which require more than a year. My first personal experience with boycotts by unions goes back many years ago when I was a young businessman about 22 years old. The Typographical Union had a quarrel with the New York Sun. I was ordered by the union to take my small ads out of the paper or suffer the consequences. The claim was that the Evening Sun was unfair to labor. No satisfactory explanation was given me. It was just do as we say "or else." The "or else" happened. My company was listed in a booklet circulated to all members as "unfair to labor," and any member purchasing merchandise from me in my retail department was subject to fine or other punishment. I neither complied with their demands nor have I ever been convinced that second boycotts are fair. Instead, I think they are a modified means to coerce and intimidate, as was intended in this case. Furthermore, remember, my small force were members of no union; there was no grievance against my business methods. It was simply a demand for me to help bring pressure upon another employer with whom the union had a grievance. If union membership and benefits do not have sufficient merit so that support can be obtained by reasoning instead of coercion and the creation of fear of consequences, then the union does not deserve support. I have other instances where strong-arm methods were used with my truckmen in carting my merchandise from Camden, N. J., a necessity because of railroad strikes. In other words, the secondary boycott can only be defined, in my opinion, as a strong-arm method to force B to become a party to a grievance the union has with A, regardless of there being no complaint against employer B at all. And, finally, this is hardly a good way to encourage B to do the right thing with his employees. Certainly, it is not a reward for doing what even the union would otherwise approve it. It is contrary to all of the concepts of Americanism that I know to permit an innocent third party to suffer because of a dispute between others.

Under the Taft-Hartley Act, the closed shop is prohibited. An employee is not required to join the union to work with union members, although he must make a decision one way or the other eventually in what is permitted and known as the union shop. At these hearings, the Constitution of the United States was quoted as protecting an individual union member in his privilege to not work if he chose not to do so. Here, I think it is in order to quote that same clause as follows: The Bill of Rights amendment 5, under "Protection for persons and their property," provides, among other things: "No person shall \* \* \* be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." If that is a good protection for a union man who individually determines he does not want to work, then it must be intended to protect likewise the nonunion workman who wants to work. It certainly was not intended that the right to work should be interfered with by mass picketing, violence, threats, and the many other things which I have brought to your attention in the previous part of this statement. But, more important, it seems to me, as upholding the right to work as well as not to work, is the recent decision of the United States Supreme Court, reported in the New York Times, January 4, 1949, the opinion being written by Justice Black. The action involved a determination on the part of the Supreme Court as to whether or not States could lawfully, under our Constitution, prohibit the closed shop and discrimination against a nonunion worker's right to work. I quote Justice Black in his summary as follows:

"Under this constitutional doctrine, the due-process clause is no longer to be so broadly construed that the Congress and State legislatures are put in a strait-jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare.

"Appellants now ask us to return, at least in part, to the due-process philosophy that has been deliberately discarded. Claiming that the Federal Constitution itself affords protection for union members against discrimination, they nevertheless assert that the same Constitution forbids a State from providing the same protection for nonunion members.

"Just as we have held that the due-process clause erects no obstacle to block legislative protection of union members, we now hold that legislative protection can be afforded nonunion workers."

Gentlemen, how can it be claimed just and proper in the light of the above unanimous decision of the United States Supreme Court to now attempt in the Thomas bill a nullification by providing that "nothing \* \* \* in any State law shall preclude an employer engaged in commerce, or whose activities affect commerce, from making an agreement with a labor organization \* \* \* to require as a condition of employment membership therein, or from paying to such labor organization, pursuant to a collective-bargaining agreement, membership obligations or sums equivalent thereto by deduction from wages or salaries, \* \* \*"? I am not a lawyer, nor do I think I need to be to conclude that the laws of our land were intended to give equal protection to our citizens as to their right to work or not to work, whether it be within a State or in connection with commerce which crosses State lines. An individual who desires to work or not to work I believe is well within his rights, but when labor-union leaders make decisions for thousands of workers who are thus collectively forced to make up their minds, it seems to me that we have a combination in restraint of trade, the Clayton Act to the contrary notwithstanding. I believe millions of good Americans feel as I do; namely, that the right to work cannot legally be restricted to those who, first, join a union; second, pay any fee then called upon to do so; third, agree to a collection of any dues or assessments imposed through the check-off system. If this is not slavery to a monopolistic master to whom both employee and employer must pay tribute and surrender their liberty, I would like to have explained to me what it is.

The above would be bad enough, but now I would like to ask your committee how we stockholders can continue to sit idly by while our management operates the check-off system with our funds? The late Henry Ford in November 1945, before the enactment of the Taft-Hartley Act, said that he had operated the check-off system from August 1941 through October 1945 and that his company had collected dues, etc., for the union, a total of \$7,799,924.65. Furthermore, that in the Dearborn area alone he paid to more than 1,000 union men to collect these dues \$2,814,078.36, and that "last year's collections were \$2,050,563.71." In other words, Mr. Ford was obliged in his contract with the union to collect by deduction from Ford employees' pay these sums of money which were then turned over to the union. Note that the expense of employing 1,000 union men to collect these dues became a charge against the business of \$2,814,078.36. Again I say, if membership in a labor union can only be maintained by the contract providing that we stockholders through our management in corporations collect the dues and turn the money over to the unions, the unions do not deserve their existence and continuance by any such forced collection with stockholders' money. I am informed that United States Steel, in which I am a stockholder, collected in like manner and deducted from United States Steel employees' pay envelopes a sum approximating \$3,000,000 in 1948. We stockholders are by these means maintaining a union membership at our expense, and these fighting funds have been and still are being used as weapons to destroy our investments in our great corporations while we have remained unarmed. By unarmed I mean management has thus far not seen fit to protect us through encouragement of a stockholders' and investors' organization which could easily exceed in voting strength that of the labor unions. While I do not take seriously the present requirements in the Taft-Hartley Act that a union member exercise his privilege of refusing to allow the deduction of the check-off from his pay envelope, still the Thomas bill would remove the present requirement that the employee authorize this in writing. Do you suppose our American citizens would stand for our collecting money to be sent to Stalin to help destroy us, while meanwhile we remain unarmed? The time has come, gentlemen, when stockholders are going to be heard from either in the courts to protect their rights or by management being required to fight for their stockholders. I think this should be borne in mind when labor unions think they have "swallowed the canary" and that the President and Congress received a mandate to turn our country over to them.

The President and those in Congress who entertain the delusion that the millions of employees (union and nonunion) want the protection against unions repealed would do well to note the results of the survey made by the Opinion Research Corp. as released January 31, 1949. This showed that:

1. 68 percent wish the closed shop outlawed.
2. 79 percent want the non-Communist affidavit requirement.
3. 80 percent want the requirement for filing financial data.



4. 55 percent want employers allowed freedom of speech.

5. 73 percent want the provision permitting suit against unions.

In conclusion, I maintain that the world has suffered from dictators, whose policy has been rule or ruin. The First World War was fought to stop the Kaiser. In that attempt we thought we had accomplished a lasting peace. World War II was fought to stop another dictator, Hitler, who thought he could rule or ruin. Now we are worried about Stalin, who policy, I do not hesitate to say, is one of rule or ruin. We are not permitting Mr. Stalin, however, to blockade western Germany. You know what we are doing about that. But, when it comes to blockading our shipping so that ships cannot sail or be unloaded, electric lights are cut off, railroads cannot run, or there is no heat because of the coal strike, then we have the type of dictator represented by John Lewis, Mr. Whitney, Phil Murray, Mr. Petrillo, etc. Now someone will say that unions do not indulge in these practices of rule or ruin. Well, let's see. Before we had the Taft-Hartley Act, or in September 1945, and when we were operating under the Wagner Act, to which so many of our legislators think we should return, this happened. R. J. Thomas, president of the United Automobile Workers, issued an ultimatum and said, according to the Detroit Times issue of September 14, 1945:

"If industry refuses to negotiate on an industry-wide basis, we will deal with individual companies on the following basis:

"First, we will pick out a company to close down. We will not just strike in one department or in one plant. We will call everybody out in every department in every city in which the company operates.

"Then we will see that its competitors get full 100-percent production. There cannot and will not be any strikes of any kind at any of the competitive companies' plants or at the plants of companies supplying them with parts or material.

"We are informing our membership that the international union will not tolerate strikes of any kind during the campaign. We are planning to hold regional conferences in the West, Middle West, and East within the next month to explain the program to local representatives.

"I hope it will not be necessary to bring this sort of economic pressure. Our demands are not based on fancy or theory. They are based upon careful analyses of the financial conditions of the various automobile companies, and we know we are not asking for anything unreasonable."

General Motors was the victim picked, and Ford and Chrysler were to be supported. I am a stockholder in General Motors, and I strenuously objected to any such tactics, at that time branding them a violation of the Sherman Act, again the Clayton Act notwithstanding. Nevertheless, we had strikes, sit-downs on our property, damage to our machinery, lawlessness, etc., which are a matter of record. General Motors finally issued a statement and advertised the situation in a folder titled "Danger on the Production Front," dated October 3, 1945. Gentlemen, I need not go any further to convince you that, if we go back to any of the conditions from which we suffered under the Wagner Act, if our management does not have freedom of speech to explain in simple, understandable English to our employees, how these sort of things are not good for our country, let alone our free-enterprise system, then we are heading for the precipice.

The CHAIRMAN. We will stand in recess until 9:30 tomorrow morning.

(Whereupon, at 5:45 p. m., the committee adjourned to reconvene at 9:30 a. m., Wednesday, February 23, 1949.)

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